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In Re: Madugula Jermiah

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Court : Andhra Pradesh

Decided On : Nov-28-1955

Reported in : 1957CriLJ1071

Judge : Subba Rao, C.J. and ;Bhimasankaram, J.

Appellant : In Re: Madugula Jermiah

Judgement :

Subba Rao, C.J.

1. The accused was convicted by the Sessions Judge, KurnooJ, under Sections 302 and 392, I. P. C. and sentenced to transportation for life under the first count and to undergo rigorous imprisonment for seven years under the second count.

2. The following genealogy may be useful to appreciate the unfolding of the prosecution case.

VENGAMMA (deceased) BALA VENKATA

| |

Pullamma (D. 1951) ----------

| | | |

---------- Swamidas Thomas Roubbyn

| | | (died May 1954) |

Varmiah bhagyamma David Jeremiah

(P.W. 5) (deceased) (Accused)

Jayamma

3. Vengamma and her granddaughter Bhagyamma, the two victims, were residents of Bhima-varam. The accused is a resident of Ayyavarikodur, which is about 2-1/2 miles from Bhiinavaram. P.W. 5, who originally belonged to Regadi Gudur, was residing, since his marriage, with his wife Bhagyamma in Bhimavaram. Vengamma owned property worth Rs. 50,000 or Rs, 60,000 and that property was being managed by the accused and his father Thomas till P.W. 5 became the son-in-law of Vengamma. Thereafter, they were not allowed freely into the house by the deceased Vengamma. The accused also discarded his first wife and was requesting Vengamma for financial aid to get himself married but she refused to help him. He was also under the impression that, in the event of David's death, he would be preferential heir to the estate of Vengamma and, therefore, harboured the idea of doing away with Vengamma and Bhagyamma and become the manager of the estate. With these motives, on the night of 18-9-1954, when P.W. 5 was away, he entered the house, murdered Vengamma and Bhagyamma, the former by strangling her and the latter by stabbing her and took away the mud pot containing money by removing it from the place where it was buried and also took away a pair of silver bangles from the body of Vengamma.

4. Dr. K. Rajeswari who conducted the autopsy on the dead bodies of the two victims, found the following wounds on the body of Bhagyamma:

1. A lacerated irregularly cut edged wound right across the front portion of the neck extending 3 inches from the back of the right ear as far as 2-1/2 inches to the back of the left ear. Both the ends of the wound were tapering upwards to the occipital region. The wound is at the level of the IIIrd cervical vertebrae and it extends from the front part of the neck to the body of the cervicle vertebrae, cutting through the naso pharyn. all blood vessels and nerves on either side.

2. An irregular incised wound 2 inches x 1/2 inch x 1/10 inches on the right side of the neck below the end of the first injury.

3. An irregular abrasion 1 inch x 1/2 inch at the back of the left elbow.

4. Four abrasions 1/5 inch x 1/16 inch each on the outer surface of the right wrist joint.

5. Among the above four abrasions, there is a clean-cut wound 1/2 inch x 1/1.0 inch x 1/16 inch.

6. An abrasion 1/6 inch x 1/16 inch in the middle and inner part of the left fore-arm.

She is of the opinion that injuries 1, 2 and 5 could have been caused by a moderately sharp deadly weapon of the pattern of M.O. 4, that injury No. 3 could have been caused by contact with a rough surface and that injuries Nos. 4 and 6 could have been caused by scratching with nails. On the body of vengamma, she found the following injuries:

1. Four depressions like finger prints on the right side of the neck.

2. Five depressions like those of four fingers and a thumb on the left side of the neck. Both these were below the angles of the mandible.

3. Four abrasions 1/10 inch x 1/6 inch, 1/8 inch x 1/6 inch, 1/6 inch x 1/8 inch and 1/6 inch x 1/8 inch on the wind pipe (larynx) at the level of the fourth cervical vertebrae.

4. Diffused bluish contusions in front of the neck at the level of the third injury extending 1-1/2 inches away to the right side and 1-1/4 inch away to the left side of the middle line of the neck.

She was of opinion that Bhagyamma would have died of haemorrhage and shock probably due to injuries on the neck and that Vengamma would have died of asphyxia and shock probably due to throttling. This evidence clearly shows that whoever inflicted the injuries on the two women must have intended to kill them and, therefore, must be guilty of murder.

5. P.W. 13, the Sub-Inspector of Police, who examined the scene of offence, saw pieces of bangles and pieces of gold tali lying near the corpse of Vengamma, a pit in the kitchen room about 1 foot deep, a blunt knife near that pit and a bunch of keys lying near the iron safe. This evidence indicates that the person who killed the women was also guilty of robbery. The next question is whether the accused is the culprit. It may be stated, at the outset, that there is no direct evidence but the prosecution seeks to bring home the guilt to the accused by circumstantial evidence.

6. Coming to the motive, the suggestion that the accused would succeed Vengamma after David has no foundation. P.W. 5, the husband of the deceased, Bhagyamma, speaks to the request made by the accused to Vengamma for monetary help to get himself married and her refusal to do so. He says that when she refused to help him the accused left her house in anger. In cross-examination he further adds that about 8 days prior to the occurrence, the accused demanded Vengarnma to give money and that when she refused, he threatened to kill her, and went away.

This witness gave the first information report Ex. P-17, wherein he stated that, on the night of 18-9-54 he was sleeping on a slab covered over a granary pit, outside his house in its northeastern corner that in the early morning he was awakened by the crying of his child Jayamma and that when he went inside, he saw the dead bodies of his mother-in-law and wile. But as P.W. 5, he gives the following version, which is completely different from that given in the first information report. As he did not get sleep, he went outside the house and was sitting on pial built over a granary. One Yob who was not examined in the case invited him to the house of Narasigadu to play cards. Both of them went to the house of Narasigadu P.W. 7 and in his house George, Devadanam, Narasigadu, Yob and himself played cards till past midnight.

After midnight George, Yob and Devadanam went away and himself and Narasigadu went to the river to put the distillation pot there. When he returned home, he saw the door of his house opened. As there was no response to his calls he took the tin lamp to the house of P.W. 6 and, after lighting it, both of them went

inside the house and found the two dead bodies. The only explanation that can be suggested for this irreconcilable conflict between the two versions is that this witness was afraid to divulge the fact that he was a party to gambling and also took part in hiding the distillation pot. It is very difficult to rely upon the evidence of this witness who, according to his own showing, gave a false version in his first information report, unless his evidence is corroborated on material particulars.

Though he says now that the accused, a week prior to the incident, threatened to kill Vengamma, he never suspected the accused but he told P.W. 14, the Circle Inspector of Police, that he suspected the father of the accused and the paternal uncle of the accused as the possible murderers. That indicates that his evidence in cross-examination that a week prior to the occurrence the accused threatened to kill Vengamrna is an after-thought. We cannot, therefore, acting on his evidence hold that the motive for the murder suggested by the prosecution had been made out.

7. We shall now proceed to consider the circumstances implicating the accused in the murder. No one saw the accused entering the house of Vengamma or leaving that house on the night of 18-9-54. No one also speaks to the fact of seeing him on that night any where near that house. P.Ws. 8 and 9 are examined to show his movements on that night. P.W. 8 saw him about 8 or 9 p.m. on the night of 18-9-54 coming from the direction of Kodur which is about 1-1/2 miles from Bhimavaram. When accosted he told him that he was going to Yerrngimtala which is two miles to the west of Bhimavaram to see his sister.

P.W. 9 saw him early morning on the 19th proceeding towards Kudur at a distance of about a mile from Ayyavari Kodur. This evidence, therefore, even if accepted in toto, does not establish that the accused was found anywhere near the place of occurrence. The fact that he was seen at a place a mile or a mile and a half from the scene of occurrence cannot be a piece of circumstantial evidence for implicating a person in a murder.

8. The next circumstance relied upon is that the accused was absconding till he was arrested on 29-10-54. P.W. 13, the Sub-Inspector, says that he arrested the accused on 29-10-54 at Ayyavari Kodui on the outskirts of the village at about 6

a.m., when ho was going out of the village. He does not say that he could not be arrested earlier as he was absconding. P.W. 14, the Circle Inspector, for the first time says that till he was arrested, the accused was absconding from the village. Except his statement, there is nothing on record to show that ho was absconding from the village. P.W. 14 says in cross-examination that P.W. 5 told him that he suspected the father of the accused and the paternal uncle of the accused and that Yob, Devadanam and George might have conspired with P.W. 7 and decoyed him to the house of P.W. 7 and organised the affairs. This indicates that the accused was not suspected till a later stage.

If really the accused absconded after the murders, P.W. 5 as well as the Police would have immediately suspected accused; nor is there any evidence to show that any search was made for the accused and he was not in the village. The fact that he was arrested at the outskirts of the village itself shows that he did not leave the village. The accused in his statement also says that he was arrested at his house ,10 or 12 days after the occurrence and was taken to Nandyal and that he was contacting the Police at Nandyal every day. We cannot, therefore, accept the prosecution case that the accused was absconding and, therefore, he was not arrested. It is more likely that, as the prosecution did not make up their mind about the accused, they did not arrest him till 29-10-1954.

The next piece of evidence is the discovery of the blood-stained knife M.O. 4 in the manger under the husk. The Chemical Examiner found bloodstains on M.O. 4. Ex. P-21 is the Panchayatnama prepared in connection with M.O. 4. It shows that the accused took the police and the elders to the house of Vengamma, removed the chaff about 2 feet on the southern side in the cattle manger, and produced a knife without a handle and about 8-3/4 inches in length with red stains, the sharp part of it being 5 inches and the tip of the knife being blunt. It was attested by the village munsif, the Circle Inspector and one Mormleen Sahib. P.W. 13, the Sub-Inspector, says in his evidence that when he went to the scene of offence he saw a blunt knife near the pit but he did not seize it. It is inexplicable why the Police Sub-Inspector did not seize the knife that was found near the pit, though he seized the pieces of bangles, beads and tali. The village munsif, who was examined as P.W. 11, says that there was a blunt knife at the fire place and that the Sub-Inspector

seized it. This version must be true, for it is more probable than the version of Sub-Inspector,

When a police officer saw the knife at the place where two persons were murdered, is it likely that he would have ignored it and collected only the other materials found there? The Sub-Inspector as this witness says must have seized it and for reasons of his own he is now denying that fact. What has become of knife found at the fireplace? If the police had not taken it, P.W. 5 or his dumb brother-in-law must have taken it, P.W. 5 has not produced it. But the Police made no attempt to produce this knife in Court. This fact supports the suggestion made by the learned Counsel that the knife alleged to have been taken out by the accused from under the husk in the manger is the same knife found by the pit. The accused in his statement denies that Police or panchayatdars took him to the house of Vengamma and says that he did not know to whom M.O. 4 belonged. In view of the aforesaid suspicious circumstances, we must give the benefit to the accused and hold that the blood-stained knife was not discovered on the information given by the accused.

9. Coming to the other materials discovered on the information given by the accused, Ex. P-23 relates to the white knickers alleged to have been worn by him at the time he committed the murder. It is stated in Ex. P-23 that the accused stated that he buried it in the paddy field of Sheik Hussain Sahib and produced it in the presence of the elders. It is also noticed that on the back of the knickers there were some red marks while on the right side there were green signs here and there. This was signed by P.W. 12 and 3 other elders, who were not examined. The Chemical Examiner did not find any blood-stains on the knickers. The mere fact that some knickers were shown by the accused, in the absence of any blood-stains, is not of any evidentiary value. Nothing, therefore, turns upon this fact,

10. Ex. P-25 is another Panchayamama dated 29-10-1954 signed by the elders including Nemoji Rao. It relates to the discovery of silver bangles and a pot containing Rupees. It recites that the accused, in pursuance of the information by him, took the elders and the Police to the field of Vanipenta Sivarama Reddy of Kottapalli and showed the bottom of the date tree and after removing earth of

about two feet from that place produced one old gruel mud pot and a pair of silver bangles placed on it. It is also noticed that there was some wet mud above and under it there was some earth of a manger.

On counting, it was found that there were 740 George VI rupee coins and 99 George V old rupee coins. The learned Counsel commented on the examination of only Nemoji Rao who figured as a Panchayatdar in other criminal cases. The Inspector of Police who was examined as P.W. 14, also speaks to the fact of the discovery on the information given by the accused. We do not see any reason to reject the evidence of Nemoji Rao and of the Circle Inspector in regard to the factum of the discovery of the aforesaid articles.

11. From the aforesaid discussion of evidence, the following facts may be taken as established.

(i) Though motive has been suggested, there is no acceptable evidence to support the case of the prosecution that the accused expected to succeed to the property of Vengamma after the death of David, that he importuned Vengamma for money and that on refusal by her he threatened to do away with her.

(ii) On the night of 18th and on the early morning of the 19th, the accused was found by P.Ws. 8 and 9 about a mile or 1-1/2 miles away from the house where the murder was committed.

(iii) He was arrested on 29-10-54, i.e., one month and ten days after the incident, not because he absconded but because the police had not made up their minds about the culprit till about that date,

(iv) On the information given by the accused the pot containing rupees and silver bangles proved to have been worn by the old woman were discovered. The question is whether we can hold on the aforesaid circumstantial evidence that the accused is guilty of murder. It cannot be denied that, in the case of circumstantial evidence, the facts must be verified with scrupulous accuracy and the facts established must be consistent and consistent only with the accused being the culprit and should not be susceptible of any rational explanation. It has been held

that inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt.

12. Can it be said from the aforesaid facts that the only conclusion is that the accused committed the murder? Before we express our opinion on this question it may be convenient to consider the points of law raised by Mr. Lakshmaiah in an attempt to exclude the discovery of the pot and the silver bangles from the category of relevant evidence. It is contended that the information given to the Police which was admissible as evidence under Section 27 of the * Indian Evidence Act is made irrelevant by Article 20(3) of the Constitution of India. Under Section 27 of the Evidence Act, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. By Article 20(3) of the Constitution of India, no person accused of any offence shall be compelled to be a witness against himself. On a combined reading of the two provisions, it is contended that the information extracted from an accused by coercion or force though admissible as evidence under Section 27 of the Evidence Act, if the other conditions laid down therein are complied with, cannot be used as evidence after the coming into force of the Constitution of India as, by permitting such information to be used as evidence in Court, the accused is compelled to be a witness against himself.

In support of this contention reliance is placed upon judgment of the Supreme Court in M.P. Sharma v. Satish Chandra : 1978(2)ELT287(SC) . There, Messrs. Dalmia Jain Airways Limited went into liquidation. On investigation it was discovered that an organised attempt was made from the inception of the company to misappropriate and embezzle the funds of the company. The Inspector appointed suggested that it was necessary to get hold of the books not only of the company but also of the allied concerns controlled by the Dalmia group. The District Magistrate, Delhi, ordered investigation of the offence and issued simultaneous searches at as many as 34 places. The petitioners filed an application under Article 32 of the Constitution of India for quashing the search

warrants and for the return of the documents seized. One of the contentions raised was that Article 20(3) of the Constitution of India prohibits the production of such documents on the ground that compelled production of incriminating documents from the possession of an accused was compelling an accused to be a witness against himself. In dealing with that contention, Jagannadha Das, J., made the following observations at p. 1087 (of SCR) : (at p. 304 of AIR):

Broadly stated the guarantee in Article 20(3) is against 'testimonial compulsion'. It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness stand. We can see no reason to confine the content of the Constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is 'to be a witness'. A person can be a witness not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of dumb witness (see Section 119 of the Evidence Act) or the like. 'To be a witness' is nothing more than 'to furnish evidence' and such evidence can be furnished through the lips or by production of a tiling or of a document or in other modes...Indeed every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the Court room. The phrase used in Article 20(3) is 'to be a witness' and not to 'appear as a witness'. It follows that the protection afforded to an accused in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him.

It is therefore, clear from the aforesaid passage that Article 20(3) is not confined to the giving of evidence by an accused orally or by producing evidence in a Court room but is extended to compelled testimony previously obtained from him. In the case before the Supreme Court, the documents were recovered from the office of the company and its allied offices to be used in Court as evidence in the criminal

case that may be launched against the company. That was held to be illegal by reason of Article 20(3) of the Constitution of India. By the same parity of reasoning, information obtained from an accused by coercion by Police, cannot also be used in a Court as evidence against him for the said information is certainly compelled testimony previously obtained from him.

13. The learned Public Prosecutor relied upon another decision of the Supreme Court in Ramkishan Mithanlal Sharma v. State of Bombay : 1955 CriLJ196 , in support of his contention that information obtained even by force under Section 27, if the other conditions laid down therein are satisfied, is not hit at by Article 20(3) of the Constitution of India. One of the questions raised there was whether evidence in regard to test identification parades held alter 1st August 1951 was admissible having regard to the provisions of Section 162, Cr. P. C. In dealing with that point at p. 140, the learned Judges restated the scope of Section 27 of the Evidence Act as follows:

Section 27 is an exception to the rules enacted in Sections 25 and 26 of the Act which provide that : no confession made to a police officer shall be proved as against a person accused of an offence and that no confession made by any person whilst he is in the custody of a police officer unless it be made in the immediate presence of a Magistrate shall be proved as against such person. Where however any fact is discovered in consequence of information received from a person accused of any offence in the custody of a police officer, that part of the information as relates distinctly to the fact thereby discovered can be proved whether it amounts to a confession or not. The expression 'whether it amounts to a confession or not' has been used in order to emphasise the position that even though it may amount to a confession that much information as relates distinctly to the fact thereby discovered can be proved against the accused. The section seems to be based on the view that if fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence. But clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate...

On a bare reading of the terms of the section it appears that what is allowed to be proved is the information or such part thereof as relates distinctly to the fact thereby discovered. The information would consist of a statement made by the accused to the police officer and the police officer is obviously precluded from proving the information or part thereof unless it 'comes within the four corners of the section.

The aforesaid passage re-states the law authoritatively laid down by the Judicial Committee in Kotayya v. Emperor ILR (1948) Mad 1 : AIR 1947 PC 67 (C). Their Lordships were not called upon to decide the effect of the impact of Article 20(3) of the Constitution of India on the provisions of Section 27 of the Evidence Act.

14. Under Section 27 of the Evidence Act, the 'information given to the Police relating distinctly to the fact thereby discovered, is allowed to be given in evidence by the Police. It is not a condition for the applicability of Section 27 that the information should have been given voluntarily by the accused. Whether it is given voluntarily or otherwise, the said information is made admissible in evidence as the Legislature presumably thought that the fact discovered in consequence of the information is sufficient guarantee of the truth of the information. That is the reason why, though, as a rule, statements made to the Police arc inadmissible as substantial evidence on the assumption that the Police are in a position to compel an accused to give information, the guarantee afforded by the discovery is thought sufficient protection against any self-inculpatory information extracted from the accused.

Therefore, the information given under Section 27 may be either voluntary or extracted from him by compulsion. In either case, before the Constitution it was admissible in evidence, if the conditions laid down in the section are complied with. But Article 20(3) of the Constitution 'embodies the principle of protection against compulsion of self-incrimination' and the protection afforded under that Article extends to compelled testimony previously obtained from him. The information given to the Police by the accused is certainly testimony previously obtained from him, for that is intended to be used in a Court of, Law. If, that information is not voluntary but is compelled testimony, Article 20(3) prohibits the user of the said

evidence in Court.

Section 27 of the Evidence Act and Article 20(3) of the Constitution may be reconciled. Information voluntarily obtained from an accused, relating distinctly to the fact thereby discovered, is not hit by Article 20(3) and, therefore, is relevant evidence under Section 27 of the Evidence Act. But such information obtained by compulsion was admissible in evidence before the Constitution, After the enactment of Article 20(3), they must be excluded from evidence for otherwise in effect the accused, would be compelled to be a wit-ness against himself. The question, therefore, is whether in the present case, the Police obtained the information by compulsion.

15. Except die statement made by the accused that he was arrested at his house 10 or 12 days after the occurrence and was taken to Nandyal and that he was beaten by the Police, there is nothing on record to suggest that the information was extracted from him by compulsion. The Police Sub-Inspector as P.W. 13, says that he was arrested at 6 a.m. and the Circle Inspector as P.W. 14, says that he gave the information at about 7 a.m. P.W. 13 and P.W. 14 deny that they beat the accused. We have no reason to reject the evidence of the Police Officers. We, therefore, hold that the information was given to the Police voluntarily. If so, it follows that the pro-visions of Article 20(3) of the Constitution of India are not violated, and the information given to the Police voluntarily, in so far as it related to the material objects discovered, would he relevant evidence under Section 27 of the Evidence Act.

16. Learned Counsel then contended that the learned Sessions Judge was wrong in drawing a presumption against the accused under Section 114 of the Evidence Act : from the mere fact that the aforesaid articles were discovered on the information given by him that he must have committed murder as well as robbary. Section 114 of the Evidence Act reads:

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case.

Illustration.

The Court may presume(a) that a man who is in possession of stolen goods soon after theft, is either the thief or has received the goods knowing them to be stolen, unless he can ac-count for his possession. The section deals with presumptions of fact. Russell in his valuable book defined presumption 'to be no inference as to the existence of one fact from the existence of some other fact founded upon previous experience of their connection'. The section, there-fore, enables a Judge to infer one fact from the existence of another proved fact having regard to the common course of natural events of human conduct The illustrations given to the section are not exhaustive. The Court may always rely on the main section in regard to a different set of facts or combination of facts to draw the presumption embodied in that section. As the section only embodies a rule of guidance evolved out of human experience, it gives an option to the Judge whether to draw such a presumption or not having regard to the circumstances of each case.

17. We shall now proceed to consider some of the leading decisions of the Madras High Court on the interpretation of the section. The earliest decision is that of Queen Empress v. Sami ILR 13 Mad 426 (D), wherein the learned Judges held that recent and unexplained possession of stolen property was presumptive evidence against the prisoners on the charge of robbery as well as of murder, when the two offences constituted parts of the same transaction. The accused in that case were charged on three counts, namely of kidnapping, of robbery and of murder. The charges against them were that they enticed away a boy named Thevoo, robbed him and murdered him on the evening of 31st August, Apart from the confession of the 1st accused, there was a considerable body of evidence which corroborated material parts of the confessional statement.

The evidence disclosed that the two prisoners were seen together near the Pemmal Koil - it may he mentioned that the dead body was found in the . garden of the temple - that the 2nd accused was on friendly terms with the murdered boy and was speaking to him at the same time and place, that the body of the murdered boy was hidden in a pit, that both the accused went, to Suramangalam station on the same night and took the train, that the 1st accused sold the bangle

to a third party, that both the accused executed a bond at Kumbakonam in favour of a relative antedating it to a date earlier than the murder, that the 1st accused was arrested when he was trying to abscond to Rangoon, and that the bond and bangle were discovered on the information given by the accused.

On the aforesaid facts, the learned Judges drew the presumption that both the accused were guilty not only of robbery but also of murder. This judgment, therefore, cannot be an authority for the position that whenever articles worn by the deceased are found in the possession of the accused or discovered on the information given by him, it should be presumed that he committed robbery and murder. To draw the presumption, it is further necessary to establish that the murder and the robbery constituted parts of the same transaction and that there must he some reliable evidence of the movements of the accused to probabilise the fact that he took part in the robbery or the murder.

18. The next case is that of another Division Bench of the Madras High Court in Public Prosecutor v. Cherreddi Munayya 21 Mad LJ 1071 (E). There, it was established that the murder and robbery formed part of one transaction and the Court drew the presumption from the recent and unexplained possession of the stolen property that the accused committed both the murder and the robbery. But apart from the possession of the stolen property, it was established in that case that the accused was seen entering the house where the murder was committed and also leaving it some time later. It was also found that he absconded and was arrested ten days after the murder. .

On information given by him, blood-stained jewels were found in a pot buried at a place half a mile from the village. From the aforesaid facts the Court drew the presumption that the accused committed both murder and robbery. One important fact to be noticed is that apart from the discovery of the blood-stained jewels, the movements of the accused connected him with the incident of murder and robbery. This decision also is not an authority for the broad preposition, namely, that from the unexplained possession of the jewels, both murder and robbery could be inferred.

19. Another Division Bench of the Madras High Court in Sogaimuthu Padayachi v. King Emperor ILR 50 Mad 274 : AIR 1926 Mad 638 (F), pointed out that on the mere unexplained possession of stolen property belonging to the deceased, the accused cannot be convicted of murder unless it is satisfactorily proved that the possession of the property could not have been transferred from the deceased to the accused except by the former being murdered. Devadoss, J., made the following observations at p. 285:

If a person who retires to bed in a normal state of health is found next morning lying dead and his safe filled and his valuables stolen and if it comes to light (bat the man did not die a natural death, but. was murdered and that if die property which was in the safe shortly before the murder is found in the possession of persons who are unable to account for them the jury is entitled to draw the inference and the law requires them to draw the inference, that the persons in possession of such property are not only the thieves but also murderers. If the persons with whom the stolen property is found have an explanation to offer which explanation if accepted would prove them to be innocent, it is for them to offer it.

20. Wallace, J., was not able to agree with the observations so widely stated by Devadoss, J. Wallace, J., at p. 291 says:

But where, as in this case, the evidence is that none of the stolen property was on the person of the deceased at the time of the murder and there is nothing to show that it could not have been obtained without the use of force to him at ail and there is no certainty that it was not obtained before the murder or after the murder independently of the murder, I an clear that no presumption can be drawn from the mere possession of stolen property to justify a conviction for complicity in the murder...

Spencer, O. C. J., to whom the matter was referred says at p. 298 (of ILR Mad) : (at p. 640 of AIR):

I think the answer must be that if there is other evidence to connect the accused with the death of the murdered man, a jury or in this country a Judge may find upon circumstantial evidence that he is the murderer. But when the unexplained

possession of stolen property is the only circumstance appearing in the evidence against the accused charged with murder and theft, the accused cannot be convicted of murder unless the Court is satisfied that the possession of the property could not have been transferred from the deceased to the accused except by the former being murdered.

This judgment also does not support the contention that in every case from the unexplained possession of stolen goods, a presumption of murder should be drawn. Nor docs the judgment of Beasley, C. J. and Reilly, J., in Kallam Narayaua v. King Emperor ILR 56 Mad 231 : AIR 1933 Mad 233 (C), support that extreme position. There, the deceased went to P.W. 3's house and from about evening meal time she was missing. Early next morning her dead body was found in a ruined and deserted fort at Amaravatht having been done to death by strangulation. There were indications on the body that she was raped and also that she was stabbed. The jewels on her body were discovered on the information given by the accused.

There was also evidence that on 30th September she was going along the bazaar towards the temple which is near the ruined fort where her body was found the next day. There is also evidence that the deceased left the house of P.W. 3 telling her that the accused was calling her. In the absence of any safe-factory explanation given by the accused, the learned Judges drew the presumption that the accused committed tire murder. It would be seen from the facts in that case that, apart from the mere discovery of the jewels, there was also ether evidence to connect the accused with the murder. The head note, stated in the following terms, brings out the view of Reilly, J.:

In making presumptions of fact or in drawing inference of fact, from evidence a Judge or jury must always have regard to all known facts of the case, Outside the sphere of presumptions of law no Court or Judge can usefully attempt to lay down by general ruling, or even to express a general opinion what inference may or may not be drawn by other Judges from other facts in other cases.

When things, which were on a murdered person's body at the time when he was murdered, are traced to a person accused of the murder and he gives no

explanation of his possession of them, those may be important facts for use in making an inference that ho took part in the murder. It is not the law that the Judge or jury must be certain that no other explanation of the facts is possible before they find the accused guilty. If the accused person offers an explanation, then it is for the prosecution to show that that explanation is untrue.

This judgment, therefore, does not lay down that Courts shall presume that an accused found in possession of the articles shown to have been in the possession of the deceased must be held to have committed murder or robbery. Having regard to the facts of that case, the learned Judges drew the inference, while making it clear, that it is for the Judge or jury as the case may be, in each case, to draw an inference of fact from the facts placed before him or them.

21. In Periyasanii Thevan, In re., : AIR1950 Mad714 , another Division Bench of the Madras High Court drew an inference of murder under the following pieces of circumstantial evidence. The deceased and the accused were on inimical terms some time prior to the date on which the murder took place. The accused had threatened the deceased that he would cut him even as the deceased had cut and killed his goat. On the date of the murder, the deceased and the accused were seen in each other's company or in close proximity to each other some, hours before the murder took place.

The accused was seen with a blood-stained chopper going in a direction opposite to the place of murder but coming from the place of murder. On information given by the accused, a blood-stained shopper was recovered from a bush 2-1/2 furlongs to the east of the scene of the murder. The Judges Govinda Menon & Krishnaswami Nayudu JJ. held that the evidence was not sufficient to bring home the guilt to the accused beyond reasonable doubt. This decision also indicates that the drawing of presumption under Section 114 of the Evidence Act depends upon the circumstances of each case.

22. To a similar effect, Rajagopalan and Rama-swarm Goundar, JJ., expressed their view in In re Kaliaperumal : AIR1954 Mad1088 . There, the accused was charged for the murder of a boy by drowning him in an irrigation channel and having sobbed him of the petty jewels he wore then. There was, no direct

evidence to prove that it was the accused that had drowned the boy in the channel. But the prosecution relied upon circumstantial evidence. It was established that, on information given by the accused, the dead body was later found in the channel and the jewels were recovered. In dealing with the limits of the presumptive evidence, the learned Judges observed at p. 1089:

Where murder and robbery of the jewels on the deceased person are proved to have been integral parts of the same transaction, the presumption that can be drawn from the possession of property which was on the deceased person may, consistent with all the facts proved in the case, be that the person to whom such possession was traced not only committed the theft of those jewels but also committed the Murder which formed part of the same transaction, as theft. But before any such presumption can be drawn, the primary thing to be proved is that the accused had no satisfactory explanation to offer for Ms possession of such jewels.

The accused explained that, after the murder of the boy, the jewels were handed over to him by one Muthuswami to be disposed of. The learned Judge held that the burden still rested on the prosecution to prove that the explanation was not true, if it was n the falsity of that explanation that the prosecution relied to invite the Court to hold that the possession had not been satisfactorily accounted for. Having held that the prosecution had not discharged the burden, the learned Judges acquitted the accused of murder but convicted him under Section 201, I. P. C.

23. It is not necessary to multiply cases. The well-settled rule as to circumstantial evidence is that it must be consistent and consistent only with the guilt of the accused and if the evidence is consistent with any other rational explanation, the accused must be given the benefit. It is also established that, if Warder and robbery form parts of the same transaction, a presumption may be drawn against the accused for murder if he is found to be in possession of the jewels worn by the deceased in the absence of a reasonable explanation by him. But no case goes to the extent of compelling a Court to draw a presumption irrespective of other circumstances in the case.

As the presumption is only one of fact, great care should be taken before drawing a presumption particularly in the case of a serious offence on slender material for it would be a leap in the dark with disastrous consequences. Unless, therefore, some definite fact connecting the accused with the murder is established, the Courts should be chary to draw the presumption of murder from the mere fact of possession of articles worn or were in the possession of the deceased. In every case where such a presumption is drawn, it will be noticed that, apart from other incriminating circumstances, there was some evidence showing that the accused was either very near to the place where the murder was committed or was seen going in or coming out of the scene of occurrence.

Apart from the fact that the accused was 1-1/2 miles away from the scene of offence, there was no evidence other than his information which led to the discovery of the jewels and the money to connect him with the murder. We cannot, therefore, on the slender material placed before us hold that the accused committed murder or robbery. It would be an unwarranted jump from the possession of the articles discovered to implicate an accused in a murder. The learned Sessions Judge himself assumed in his judgment that more than one person must have taken part in the offence. It might be that others committed the murder and robbery and the articles were given to him for hiding them. We, therefore, think that the accused cannot be convicted for murder or robbery. But the question is whether he can be convicted for a lesser offence.

24. From the aforesaid facts, it is obvious that the accused hid the wristlets and the pot of money. This certainly resulted in screening the murderer. It has been held that an accused charged under Section 302, I. P. C., can be convicted under Section 201, I. P. C., though there is no specific charge, if the facts justify it. See Nagan v. Emperor, : AIR1954 Mad1088 .

25. We therefore, set aside the convictions and sentences passed on the accused tinder Sections 302 and 392, I. P. C., convict him under Section 201, I. P. C., and sentence him to undergo rigorous imprisonment for a period of three years.

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