

In Re: Narsiah and ors.

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Court : Andhra Pradesh

Decided On : Nov-13-1958

Reported in : AIR1959AP313; 1959CriLJ689

Judge : Umamaheswaram, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 103, 342, 342A, 378 and 429

Appeal No. : Referred Trial No. 18 of 1958

Appellant : In Re: Narsiah and ors.

Advocate for Pet/Ap. : O. Chinnapa Reddy, ;K. Somakonda Reddy, ;S. Suryaprakashan, ;C. Padmanabha Reddy and ;T. Bali Reddy, Advs.;Public Prosecutor

Judgement :

Umamaheswaram, J.

1. As a result of the difference of opinion between Bhimasankaram J. and Sanjeeva Row Nayudu J., as to whether accused 1 to 3 committed the offence of murder under Section 302 I. P. C. read with Section 34 Indian Penal Code, on the midnight of 14-3-1958 at Nagraj-pally, Medak District, the Division Bench directed that the case may be heard by a third Judge under Section 429 Code of Criminal

Procedure, and the case was accordingly posted before me for delivering my opinion.

The reference to Section 429 Code of Criminal Procedure, in the order is stated both by the learned Advocate for the appellants as also by the learned Public Prosecutor to be a slip for Section 378, Code of Criminal Procedure. Though Section 378 Code of Criminal Procedure, enacts that the third Judge before whom the opinions of the differing Judges are laid shall deliver his opinion after such hearing as he thinks fit, I heard the arguments on both sides in detail and perused the entire evidence as to whether the prosecution has satisfactorily established that accused 1 to 3 are guilty of the offence charged against them.

2. Before dealing with the evidence of the prosecution witnesses as to the motive of the accused in committing the murder as also the commission of the offence, I shall refer to the various suspicious circumstances relied on by the learned Advocate for the appellants. The offence took place at Nagraj-pally on the midnight of 14-3-1958. The police Station is situate at Nanganoor, 3 miles away from the village.

The First Information Report marked as Exhibit P-3 was according to P. W. 16 presented only at 11 a.m., on 15th March, though according to P. W. 5, he took the report to the Police Station House at about 8 a.m. It is surprising to note that instead of proceeding to the Police Station at Nanganoor and reporting the offence, P. W. 5 stated that he proceeded to a village Siddannapeta, 5 or 6 miles away, and got the First Information Report drafted by Rama Reddy, the clerk of the Village Patel Moh-ammad Akbar.

It is of importance to note that though under Section 154 of the Code of Criminal Procedure, the first information report should be signed by the person giving it, Exhibit P-3 does not bear the thumb impression of P. W. 5. Though on Exhibit P-3, it is noted that it was delivered at 11 a.m., it is curious that P. W. 16 did not proceed to the scene of offence till 3 or 3-30 p.m. Though the inquest was stated to have been held at 4 or 4-30 p.m., and the corpse was sent to the Doctor at Siddipet, 14 miles away, the body did not reach till 2-00 p.m., on 16-3-1958.

The First Information Report, which was delivered at the Police Station according to P. W. 16 at 11 a.m., reached the Magistrate at Siddipet only at 3 p.m. on 16th. It is very significant to note that at the inquest, the two alleged eye-witnesses P. Ws. 2 and 3 were not examined. Even though the case of the prosecution is definite that they received information that the accused committed the offence, they were not arrested by P. W. 16 soon after he reached the village. It is stated that it was only after the Sub-Inspector (P. W. 17) took over the investigation at 8-30 p.m. that he arrested the accused at 9 p.m. The accused, who were produced before the Magistrate at Siddipet, 14 miles away ->n 16th were once again remanded to the Police custody, and it is stated that the material objects were all discovered on 18th as a result of the information given by them at their village Nagrajpalayam. No explanation whatsoever is given as to why the accused were not arrested till 9 p.m. on 15th or as to why their houses were not searched till 18th. The material objects that are alleged to have been seized were not produced before the Magistrate till 20th.

The explanation of P. W. 17 that the Sarishtadar of the Magistrate's Court refused to receive the material objects on 19th when they were produced in the Court on the ground that the bailiff was not present is also unconvincing. Though the inquest was held on 15th, the report did not reach the Magistrate till 22nd. It was only on 26th that the articles were sent to the Chemical Examiner for determining whether the material objects contained human blood. The various circumstances and delays referred to supra raise considerable suspicion and throw doubt on the prosecution case.

3. As pointed out by Bhimasankaram J., there is 'paucity of detail in the presentation of the prosecution case'. No plan was produced to give an idea as to the place of occurrence, the position in which the deceased was lying on the cot, its distance from the door of the house, and the place where accused 4 to 6 were standing. The chimney of lamp with the aid of which the eye witnesses P. Ws. 1 to 3 deposed they identified the accused was also not produced.

4. I shall now deal with the motive which according to the prosecution, prompted the accused in committing the brutal murder on the night of 14th. In the First

Information Report, it was stated that it was as a result of the dispute in regard to the tamarind tree and a well by the side of their house that the offence was committed. But it was elicited in the course of the cross-examination of several of the prosecution witnesses that the dispute as to the tamarind tree and the well was settled by mediators long ago.

Consequently, the offence could not have taken place on account of the dispute as mentioned in Exhibit P-3. The prosecution witnesses stated that apart from the disputes relating to the opening of a drainage channel by the deceased a month earlier and in regard to a babul tree, the immediate dispute which led to the commission of the murder was the result of the hen incident, P. W. 1 deposed that on the day preceding the murder, the deceased had dried his paddy in the courtyard while the hens of the accused came there and his son drove them away by throwing a stone at them.

The accused who arrived at the scene according to her threatened her son that they would kill him in the same way as the goat is sacrificed on the occasion of the harvesting of the crop. The brother of the deceased examined as P. W. 5 stated that the hen incident occurred three days prior to the date of the offence. P. W. 1 admitted that she was not present at the time when the hen incident took place and that what she stated was only hearsay.

The other witness that spoke about the hen incident was P. W. 13. He was one of the plaintiffs in the suit which was instituted for a declaration regarding the tamarind tree. Vide Ex. D-3. He is also the cousin of the deceased and P. W. 5, and his evidence is not entitled to any credence. If the drainage channel, babul tree and hen incidents were true and if the accused had threatened to kill the deceased as graphically spoken to by P. W. 1, they would have been mentioned in the First Information Report.

It is unlikely that P. W. 5 would have forgotten to refer to those recent incidents but only mentioned the dispute relating to the tamarind tree and the well. In view of this serious omission to refer to those alleged incidents in the earliest report, I am inclined to think that those incidents are all untrue. In this view, it is unnecessary to refer in detail to the several discrepancies in the evidence of P. Ws. 5, 7, 8 and 10

as regards those incidents.

While P. W. 7 stated that he was the only person present at the time of the dispute over the drainage channel, P. W. 8 stated that he and the deceased alone were present. P. W. 5 stated that he was present at the drainage incident but P. W. 8 did not refer to his presence. P. W. 10, who spoke to the drainage incident, was not interrogated or examined by the Police.

According to him, the parties did not grapple with each other but only abused each other. Having carefully examined their evidence, I am clearly of opinion that the incidents are all not true. The only dispute that is proved to have existed between the parties was the dispute in regard to the tamarind tree in Suit No. 4 of 1956 and that was compromised as admitted by the prosecution witnesses long prior to the date of occurrence.

I am therefore inclined to agree with Bhimasana-karam J., that the prosecution has not established that the accused had any motive to commit the heinous offence of murder on 14th March 1958. As pointed out by Sanjeeva Row Nayudu J., the question of motive may no doubt be irrelevant if there is direct evidence establishing the murder. But, in weighing the evidence of the prosecution witnesses there can be no doubt the motive has an important role to play.

5. The contention of Sri Chinnappa Reddi is that the appellants are quite innocent and that the charge of murder is foisted on them only as a result of their enmity with the village Patel Mohammed Akbar. A suggestion was made in the cross-examination of the prosecution witnesses P. Ws. 1 and 14 that the murder might have been caused as the deceased had liaison with the younger sister of Chinna Bala Malliah, washerman.

The documentary evidence filed in the case clearly establishes that Muhammad Akbar and the accused were on inimical terms, The 3rd accused had filed an application under Section 107 of the Code of Criminal Procedure on 14-7-1956 before the Deputy Collector, Siddipet Division. Muhammad Akbar was the 1st respondent and P. Ws. 3 and 8 were respondents 4 and 6 respectively. In the petition, it is alleged that Muhammad Akbar had caused false suits to be instituted

against him by respondents 2 and 3, viz., Rajayya and Parvathalu.

The next document relied on is Exhibit D-6 the report by Mohammad Akbar forwarding the application Exhibit D-5 filed by P. W. 3 charging Narsiah, 1st accused, as having committed theft in his house on 12-7-1956. Exhibits D-7 to D-10 are the depositions recorded in the criminal case filed by Rajayya for his alleged wrongful confinement by accused 1 to 3. Exhibit D-7 is the deposition of Syed Akbar in that case. P. W. 2 admitted that the father of Muhammad Akbar was murdered about 10 years ago and that the 1st accused herein who was prosecuted for that murder along with others was acquitted.

P. W. 12 stated that Muhammad Akbar and the accused used to quarrel though he was not aware of the proceedings instituted against each other. I have no doubt that the evidence referred to supra establishes that there were serious disputes between Muhammad Akbar and the 3rd accused. In the statements recorded by the accused under Section 342, Code of Criminal Procedure, it is clearly stated that Muhammad Akbar, the Police Patel, falsely implicated them and got them arrested for the offence of murder.

It is clearly laid down by the Supreme Court in *Hate Singh v. State of Madhya Bharat*, : AIR 1953 SC468 that the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code 'are among the most important matters to be considered at the trial'. Bose J., in delivering the judgment of the Supreme Court, pointed out that the statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box and that they have to be received in evidence and treated as evidence and be duly considered at the trial.

In an unreported decision in Criminal Appeal No. 443 of 1957 dated 7-10-1958 a Division Bench of this Court followed this decision and held that the amendment of the Criminal Procedure Code giving an option to the accused to give evidence on oath does not affect the question. The learned Judges rightly held that the position is unaltered and that the statements under Section 342 Cr. P. C. have to be considered in the same manner as would have been the case if Section 342A had

not been enacted.

Having carefully perused the statements of the several accused under Section 342 Cr. P. C., I am clearly of opinion that the case as to Muhammad Akbar falsely implicating them was specifically put forward. The view of Sanjeeva Row Nayudu J. that it was stated rather vaguely is not, in my opinion correct. The evidence of D. W. 2 is only to the effect that the quarrels which existed between Muhammed Akbar and the accused four or five years back were settled.

He did not refer to the later proceedings which were initiated under Section 107 Cr. P. C. in 1956. It is therefore not correct to say that no serious differences or disputes existed or continued between the accused and Muhammad Akbar after the compromise was effected by D. W. 2 and other elders four or five years ago. The Pleader who worked on behalf of the accused in the proceedings under Section 107 Cr. P. C. was examined as D. W. 1.

I accept his evidence and hold that there was serious enmity between Muhammad Akbar and the accused. The evidence discloses that the prosecution witnesses were anxious to make out that Muhammad Akbar was not present in the village when the offence took place and that he came only after the Police arrived on the scene. The statements made by the accused under Section 342 Cr. P. C. make out that Muhammad Akbar was present in the village at 10 a. m.

The delay in giving the First Information Report (Exhibit P-3) and the story of P. W. 5. that he went to Siddannapet, 5 or 6 miles away without proceeding to the Police Station at Nanganoor which is two miles away for the purpose of getting the First Information Report prepared by Rama Reddi who is not examined in the case and the several suspicious circumstances referred to supra lend considerable support to the suggestion made on behalf of the appellants.

6. I shall now proceed to consider the oral evidence seeking to establish the guilt of the accused. P. W. 6 was examined by the prosecution to show that on the evening of 14th when he was returning from his work, he saw all the six accused persons going together with axes and sticks in their hands towards their own field. P. W. 9 deposed that about four months back while he was returning after doing

his business he saw five accused persons drinking sendhi and the 1st accused sharpening the axe.

I have carefully perused their evidence and I am inclined to think that their evidence as to preparation or premeditation is extremely artificial and is not entitled to any weight. The same view was taken by Bhimasankaram J. Even the other learned Judge opined that their evidence did not advance the prosecution-case and that no weight should be attached to their evidence.

7. P. Ws. 1 to 3 are stated to have witnessed the occurrence. P. W. 1 is the mother of the deceased. She stated that on the night of the murder she was sleeping inside the house and that the deceased was sleeping in the court-yard in front of the door under the thatch. She deposed that while she got up on hearing the sound of the pot made by the rats and was looking at the earthen pots with the aid of a lamp, she heard the sound of the axes striking against the thatch and that she opened the door and saw the three accused persons Narsiah, Malliah and Buchiah hacking her son with axes.

She stated that when she cried out, P. W. 2 came from one side and P. W. 3 from the other side and that the accused left the place. P. Ws. 2 and 3 corroborated her evidence and stated that they saw accused 1 to 3 dealing one blow each to the deceased with axes. It is important to note that in the First Information Report given by P. W. 5, the son of P. W. 1, it was not stated that P. Ws. 2 and 3 who came on the scene, saw the accused dealing blows to the deceased with their axes.

As already stated, they were not examined at the inquest. The documentary evidence filed in the case clearly shows that there was enmity between P. W. 3 and the accused. P. W. 3 was impleaded as one of the respondents along with Muhammad Akbar in the proceedings started by Buchiah, 3rd accused under Section 107 Cr. P. C. before the Deputy Collector, Siddipet Division, Vide Ex. D-4. It also appears that P. W. 3 filed a complaint of theft against Narsiah, the 1st accused on 13-7-1956 under Exhibit D-5 and that it was forwarded by the Village Mun-sif under Exhibit D-6.

I am not impressed with the evidence of P. W. 3 and I agree with the contention of the learned Advocate for the appellants that on account of his enmity with the accused he was deposing falsely on behalf of the prosecution, It is also important to note that the occurrence took place on the midnight of 14th i. e., Dasami in Krishna Paksham, and that the Moon would not have risen before 2-30 or 3 a. m. on 15th. That is why P. Ws. 1 to 3 stated that the night was a starry one.

Though in the examination-in-chief P. W. 1 stated that she did not remember whether the Moon was- in the sky or not, in the cross-examination she asserted that it was a Moonlight night. Having perused the Rashtriya Panchangam which shows that 14th was Dasami in Krishna Paksham, I cannot accept her evidence that there was moon-light at midnight when the offence took place. The main question that arises for consideration is whether P. W. 1 was in a position to identify the accused in the darkness. She stated that with the aid of a lamp which she placed at the doorway she was able to see the accused.

It is surprising that the prosecution has not produced the lamp or chimney in order to enable the Court to judge whether there would have been sufficient light to identify the accused. Moreover, as already pointed out above no plan of the scene of occurrence has been prepared. It is not clear how far the thatch had extended, where exactly the deceased was lying under the thatch and where P. Ws. 2 and 3 were standing when they saw the accused hitting the deceased with axes. The evidence does not also disclose where exactly the houses of the accused were situated.

The evidence of the defence witnesses shows that the village consists of 20 houses and that there are at least 20 males living in the village. The evidence of P. Ws. 1 to 3 that accused 4 to 6 were standing near the wall with sticks and that they did not move their little finger when P. Ws. 2 and 3 approached the deceased appears to be extremely artificial. If P. W. 1 cried out when she saw her sort being backed to death, is it not likely that all the neighbours in the village would have assembled immediately?

Would they have permitted the accused to run away to their houses and not caught hold of them if they had known that they had committed the offence? Is not

conduct of the Police in not arresting the accused till 9 p.m., on 15th in spite of knowing that they had committed the offence unnatural? Is it likely that the accused would have been permitted to quietly go home and wash their axes and clothes from bloodstains? Having carefully examined the evidence of the three eye-witnesses, I am not impressed with their evidence.

8. It is stated on behalf of the prosecution that after the accused had left the scene of offence, P. W. 5, the brother of the deceased and P. W. 11 had come and that they were informed by P. W. 1 that the accused had committed the murder. As already pointed out, the conduct of P. W. 5 in not proceeding to the Police Station at Nanganoor but proceeding to Siddannapeta to meet Rama Reddi, the clerk of the Police Patel, for drafting the First Information Report (Exhibit P-3) raises considerable suspicion. His evidence regarding the motive of the deceased for committing the offence has already been rejected.

It is not explained as to why if he had reported about the incident at 8 a.m. at the Police Station as mentioned by him the Police did not arrive on the scene till 3 or 3-30 p.m. The omission to put his thumb impression in Ex. P-3 is also suspicious. The evidence of P. W. 11 discloses that he was not examined or interrogated by the police. If really he was present when the details as to the occurrence were narrated by P. W. 1, he would have been examined at the earliest moment by the police.

The Sub-Inspector, examined as P.W. 17, deposed that he had examined only P. Ws. 6, 9, 10 and 13. He did not state that he had examined P. W. 11. In the circumstances, I refused to look into the Case Diary at the instance of the Public Prosecutor to verify whether P. W. 11 was examined by the police or not and whether his evidence on this point should not be rejected. Having given my best consideration, I am not inclined to accept the evidence of the prosecution witnesses referred to supra that the offence of murder was committed by the accused.

9. The next question that arises for consideration is whether the material objects were recovered under the Panchanamas Exhibits P-4 to P-6 as a result of the information given by the accused. In paragraph 17 of the judgment, the learned

Sessions Judge held that

'the prosecution did not lend any evidence to prove that the articles seized at the instance of the accused were kept in tact without being tampered and that they were delivered into the Court and taken to the Chemical Examiner in the same condition'.

He further held that as the report of the Chemical Examiner was not full and complete, he was reluctant to treat it at par with sworn evidence. He further commented that the Chemical Examiner's report was silent 'as to the group test of the blood'. It was stated by Sri O. Chinnappa Reddi and admitted by the learned Public Prosecutor that during the course of the arguments no reliance was placed on the panchanamas before the Division Bench.

10. Having carefully examined the evidence, I am not inclined to hold that the material objects contained in the panchanamas were recovered as a result of the information given by the accused. As I have pointed out already, there is no explanation given by the Police as to why the houses of the accused were not searched immediately after their arrest on 15th night. It is stated that only after the accused were remanded to the Police custody on 16th, they were brought back to the village and the 1st accused showed the axe in the cornbin, accused 2 an axe in the well and 3rd accused an axe in the grainbin.

One curious or suspicious feature about the panchanamas is that the thumb impressions of the accused are obtained by the Police to those documents. The practice of obtaining the signatures or thumb impressions of the accused is highly objectionable and is condemned by the Supreme Court. Vide *Narayana Rao v. State of Andhra Pradesh* : 1957 CriLJ1320 . I am not impressed with the evidence of P W. 7 and P. W. 17 that the material objects were discovered on 18th as a result of the information given by the accused and I am not willing to place any reliance on the panchanamas Exhibits P-4 to P-6.

I agree with the learned Sessions Judge that the report of the Chemical Examiner is not full and complete and that it is not established that the bloodstain found on one of the axes is that of the deceased. Consequently I am not willing to place any

reliance on the alleged recovery of the material objects under the panchanamas.

11. The presence of the accused in the village attending to their normal functions soon after the incident also lends support to the view that they are not guilty of the offence. There is no evidence whatsoever on behalf of the prosecution that they did not visit the scene of offence after the incident. On the other hand D. W. 2 stated that he saw Buchiah near the dead body and that he was moving about in the village.

What was stated by D. W. 3 was that during the few hours he stayed near the deceased, he did not see the accused. I do not agree with Sanjeeva Row Nayudu J. that there is evidence to show that the accused did not go and see the dead body and that their conduct is consequently unnatural. In the circumstances, I am inclined to take the view that the conduct of the accused in remaining in the village and Buchiah visiting the dead body suggests that they had nothing to do with the offence.

12. On a careful perusal of the entire evidence in the case, I am clearly of opinion that the prosecution has not established beyond reasonable doubt that accused 1 to 13 had committed the offence of murder of Kumariah, and they are therefore entitled to be acquitted.

13. Before concluding the judgment, it is necessary to refer to a legal argument addressed by Sri Chinnappa Reddi, the learned Advocate for the appellants, as to the scope and effect of Sections 378 and 429, Code of Criminal Procedure. Strong reliance was placed on the observations made by Mahmood J. in *Empress v. Debi Singh*, 1SS6 All WN 275. The learned Judge pointed out that the deliberate opinion of one Judge in favour of acquittal upon a grave question of the weight of evidence in a case heard by a Bench consisting of only two Judges should, ipso facto, constitute in most cases a sufficient reason for creating such a serious doubt that the benefit of that doubt should be given to the prisoner.

While fully alive that the law as enacted by the Legislature in Sections 378 and 429 of the Code of Criminal Procedure should be given effect to, Mahmood J. observed that

'as a matter of judicial etiquette, when one Judge differs from his brother Judge on a pure question of the weight of evidence as to the propriety of a conviction, the opinion of the Judge who is in favour of acquittal should prevail at least, as a general rule'.

This view was strongly criticised by Edge, C. J. in *Empress v. Bundu* 1887 Aii WN 125. It was pointed out that there was no rule of judicial etiquette which prescribed that a Judge, in a capital or any other case, should subordinate his judgment to that of his brother Judge, and that each Judge should act upon the opinion which he has formed upon the case so far as the deciding of the case depended on questions of fact. When a similar point arose for decision before the Orissa High Court in *Khetri Bewa v. State* : AIR1952 Ori37 . Ray C. J., laid down the rule as follows:

'In my opinion what struck me at the beginning was correct, namely, that I could, unless on scrutinising the materials on record the judgment of the Judge pronouncing in favour of innocence of the accused was considered far from fairly reasonable, or, to be more accurate, not (sic) perverse, give the benefit of reasonable doubt to the accused and acquit her.'

14. A similar view was taken by Rajagopalan J. of the Madras High Court in an unreported case in *In re Karuppa Thevan* (Unreported Judgment of the Madras High Court in R. T. No. 31 of 1951) referred to in *Sitaramayya, In re* : AIR1953 Mad61 , The observations are as follows:

'Where the main question at issue is identity of the assailants..... the very fact, that one of the two learned Judges, who had to decide that question was of the view that the identity of the accused with those assailants had not been established beyond all reasonable doubt, should suffice to establish the basis for such a reasonable doubt, the benefit of which of course, the accused have to get. In my opinion, a third Judge, to whom the question is referred under Section 378 of the Code of Criminal Procedure, should normally accept that finding unless the compelling necessity of conclusive evidence on record drives him to deny the existence of any basis for a reasonable doubt'.

The view of Rajagopalan J. was disapproved by a Bench of the Madras High Court in : AIR1953 Mad61 . The observations in that judgment are purely obiter as Mack J. agreed with Somasundaram J. that the accused should be acquitted. The extract from the judgment of Somasundaram J. in R. T. No. 84 of 1951 (Mad) appended at page 190 also makes it clear that the observations made by Somasundaram J. in : AIR1953 Mad61 (supra) as to the powers of a third Judge did not fall to be decided in that case. The learned Judge stated in unequivocal terms that he did not intend to lay down in the Bench decision any guiding principle for the third Judge nor did he intend to indicate the lines on which the third Judge should approach the question.

15. As pointed out by the learned Public Prosecutor, there can be no doubt upon the wording of the Sections 378 and 429, Code of Criminal Procedure, that the whole case is before the third Judge and that he is at liberty to examine the whole evidence for himself and deliver his final opinion. The words 'after such hearing it any as he thinks fit' entitle him in appropriate cases to limit the scope of the hearing. The rule of judicial etiquette propounded by Mahmood J. in 1886 All WN 273 is no doubt not laid down in the Code of Criminal Procedure.

But, in my opinion, it corresponds or is more akin to the rule of caution laid down by the Supreme Court in construing the provisions of Section 417 of the Code of Criminal Procedure dealing with appeals against acquittal. Though an appeal against acquittal under Section 417 Criminal P. C., stands as regards the powers of an appellate Court on the same footing as appeals against conviction (as pointed out by the dissenting Judge Venkataraman Ayyar J. in *Aher Raja Khima v. State of Saurashtra* : 1956 CriLJ426) still the majority opinion was that it was not enough for the High Court to take a different view of the evidence.

They clearly laid down that in order to interfere under Section 417, Code of Criminal Procedure, it was necessary that there must be substantial and compelling reasons for holding that the trial Court was wrong. Having carefully perused the authorities dealing with this question, I am clearly of opinion that the rule of caution (styled as a matter of judicial etiquette by Mahmood J. in 1886 All WN 275 (supra) and followed by Ray C. J. in : AIR1952 Ori37 (supra) and by

Rajagopalan J. in R. T. No. 31 of 1951 (Mad) (supra)) should be observed by the third Judge in a reference under Sections 378 and 429, Code of Criminal Procedure.

Unless there are strong and compelling reasons to come to the conclusion that the opinion of the Judge favouring an acquittal is perverse, the golden rule is to give the benefit of doubt to the accused. The observance of such a rule does not, in my opinion, amount to an abdication of his functions as a Judge under Sections 378 and 429 of the Code of Criminal Procedure.

16. Even though my view of the law was as indicated supra, I still perused the entire evidence and heard elaborate arguments to satisfy myself independently whether the prosecution had established that accused 1 to 3 had committed the murder, and I have come to the conclusion on the evidence on record that the appellants are entitled to be acquitted.

17. Finally, I have only a few words to add. with regard to the observations of Bhimasankaram J. regarding the Sessions Judge. The learned Advocate for the appellants Sri O. Chinnana Reddi has not been able to point out any blanks in the depositions of the witnesses typed by the learned Sessions Judge though there are no doubt two or three omissions of words in the course of typing. I therefore do not agree with the observations of Rhima-sankaram J. that 'the learned Sessions Judge is not altogether free from blame' and that 'there are here and there blanks in the depositions which were perhaps intended to be filled up later but have not been'.

(After the opinion was expressed by Umamaheswaram, J. the case coming on for hearing before the Division Bench the Court delivered the following Judgment:)

Bhimasankaram, J.

18. Under Sections 378 and 429 of the Criminal Procedure Code, the judgment of this Court should follow the opinion delivered by our learned brother Umamaheswaram J. His opinion is that the appellants (A-1, A-2 and A-3) are entitled to be acquitted. The, appellants (A-1, A-2 and A-3) are accordingly

acquitted and directed to be released forthwith.

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