

**In Re: Muruga Goundan**

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**Court :** Chennai

**Decided On :** Jan-10-1949

**Reported in :** 1949CriLJ887

**Judge :** Subba Rao and; Panchapakesa Ayyar, JJ.

**Appellant :** In Re: Muruga Goundan

**Judgement :**

**Subba Rao, J.**

1. The accused has been charged under Section 302, Penal Code and has been sentenced to death.
2. The case of the prosecution is that the accused, along with two others (accused 2 and a), who have been acquitted, killed Unnamalai Ammal and removed the saradu that was worn by her. P. W. 3 is the sister of the accused, and V. W. 4 U the wife of the accused. They gave evidence before the Magistrate implicating the accused, but in the Sessions court they gave a different version altogether. The two witnesses were treated as hostile, and the learned Suasions Judge marked their depositions in the Magistrate's Court as substantive evidence under Section 288, Criminal P. 0. Exhisit p-4 is the deposition of P. W. 8 in the committing Magistrate's Court. She said that, four months ago, on a Monday, her younger brother, i. e., the accused, Came to her and took from her a kaiaruval saying that he wanted it for cutting pandal post. On Wednesday he returned it at lamp, lighting

time. On Thursday, he came again and asked her to give the kairuval. In that connection he told her that he and accused 2 and 3 joined together and killed the deceased, and that therefore he wanted to conceal the kairuval. Pursuant to his directions she concealed it. Later on, the police came along with the accused and asked for the kairuval. She took it from the place where she had concealed it and gave it to the police. P. W. 8 gave a statement before the Magistrate under Section 164, Criminal P. O. That statement was consistent with the evidence afforded by Ex. P-4 in all material particulars.

3. Exhibit P-6 is the deposition of P. W. 4. P. W. 4 as already said, is the wife of the accused. She deposed that on the night of Wednesday the accused came and gave a gold saradu to her and asked her to keep it in the roof of the house, and she did so. When she asked him as to how he got the saradu, he asked her to keep quiet. On Sunday the accused came to her along with the police and he removed the saradu from the roof and gave it to the police. She also made a statement under Section 164, Criminal P. O., before the Magistrate, and the recitals in that statement are also consistent with the version given by her in the committing Court.

4. When P. W. 3 and 4 gave evidence in the Sessions Court they gave a completely different version and stated that they deposed in the committing Magistrate's Court and made statements under Section 164, as the police threatened and beat them to do so. In the circumstances the learned Sessions Judge rightly treated their evidence as substantive evidence under Section 288, Criminal P. C. It may be stated that there is no other evidence either direct or circumstantial except the discovery of the jewel, with which we shall deal later on.

5. We think it is very unsafe to convict an accused only on the evidence of persons who gave one version at the Magistrate's Court and a totally different version before the Sessions Court, unless there is other reliable evidence in support of the prosecution case. In *Harnam Singh v. Emperor* A.I.R. 1937 Lah. 697 : 38 Ot. li. J. 765, the learned Judges accepted the aforesaid principle as the rule of practice and they stated the rule in the following terms:

We do not feel, therefore, that on the evidence of this character where every one of the witnesses has been demonstrated at the trial to have contradicted the statement that he made before the committing Magistrate, it would be safe to convict.

With great respect we agree with them.

6. The learned Crown Prosecutor contended that there was one important fact in this case which corroborated the evidence of P. ws. 8 and 4. The deceased had a gold saradu on her when she died, and it was identified as the one that was in the house of the accused. The learned Sessions Judge was wrong in saying that there were stains of human blood on this jewel. On the other hand, the Chemical Examiner to the Government of India states in Ex, P- 3 that the blood-stains on item 95 i. e., the gold saradu were disintegrated and their origin could not be determined. The further possibility, namely, that the jewel was taken by the accused either after the deceased was killed or that it was given to him by P. w. 6 could not be completely ruled out in this case. In the circumstances we think, at any rate, the benefit of the doubt should be given to the accused.

7. The conviction and sentence are set aside the accused is acquitted, and he is directed to be set at liberty.

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