

**The Public Prosecutor Vs. Pasala Venkata Reddi and anr.**

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**Court :** Chennai

**Decided On :** Dec-19-1944

**Reported in :** (1945)1MLJ223

**Appellant :** The Public Prosecutor

**Respondent :** Pasala Venkata Reddi and anr.

**Judgement :**

**Mockett, J.**

1. This is an appeal by the Crown against the acquittal by the learned Sessions Judge of Chittoor of accused 1 and 2 in Sessions Case No. 17 of 1944 before him. It is possible for us to deal with this appeal very shortly because it has come to what may perhaps rightly be described as a somewhat sudden and dramatic end. The facts need only be summarised. It is in evidence that the two accused who were grazing goats were in the company of the two deceased men, Masthan Sahib a forest guard, and Thimmiah, his watcher, in the Chalimamidi Reserve forest on the 31st December, 1943. It is further in evidence that the accused resented the action of the deceased in objecting to what the deceased apparently thought was illegal grazing by the accused's goats. The deceased men disappeared. Search was made and their bodies were eventually found. The prosecution relied, it may be said, almost entirely, on a confessional statement alleged to have been made by the first accused and admissible under Section 27

of the Evidence Act. No confessional statement is alleged to have been made by the second accused. In consequence of that confessional statement, says the prosecution, certain material objects were discovered, which, taken with the confessional statement and the fact that the deceased men were last seen in the company of the accused and quarrelling, is enough to prove beyond all reasonable doubt that the accused murdered the forest guard and his watcher. That might well have been so had all the proof been forthcoming. There is no difficulty whatever about the proof of a confessional statement admissible under Section 27. It should now be well known that the procedure is that laid down by a Full Bench of this High Court in *Re Athappa Goundan*<sup>1</sup> where the learned Chief Justice remarked as follows:

Statements made by an accused person which are or may be provable under Section 27 of the Evidence Act should be clearly and carefully recorded by the police officers concerned. They should be recorded in the first person, that is to say, as far as possible in the actual words of the accused. They should not be paraphrased. Obviously, if what a man says is to be used in evidence, his own words should be used and not a rendering into the third person of the purport of his statement. With such a record of the statement before him it will then be for the trial judge to decide how much of it is admissible under the section.

In other words, the correct procedure for the police officer is to record in the first person the statement of the accused, and, when he gives evidence, to say that the accused made a confessional statement, that he took it down, and then, for the purpose of refreshing his memory, to refer to the actual statement, which is of course in the police diary, and prove before the Court by that method what the accused had said. This aspect of the case seems to have been overlooked not only at the Sessions Court, but, it must be presumed, by those in Madras who advised this appeal. The only evidence of any confessional statement is contained in the following words of P.W. 24 : 'I questioned accused 1. He confessed and I recorded his confession and it was attested,' and that is all we know. The confessional statement itself was never proved by the police officer in the Sessions Court. It is nowhere on record in these proceedings although questions relating to a detailed statement attributed to accused 1 were put to him under

Section 342 of the Code of Criminal Procedure in the Committing Magistrate's Court. The result of course is that there was no evidence of any confession before the Sessions Judge and there is no evidence of any such confession before us. There is a brief statement by P.W. 2 relating to a bill hook which however had no blood upon it. It is true that the accused went on the scene with the police officer and certain panchayatdars who were called and went through a pantomime demonstrating how the murder was accomplished. But without any previous confessional statement, this is no more, if it was a confession at all, then a confession by him which would come within the provisions of Section 25 of the Evidence Act. It might even have been a demonstration by him of how somebody else had committed the murder and how he had witnessed it. This no doubt may not be likely. But this is a criminal case on a charge of murder and there is nothing in his favour to which an accused person is not entitled. The appeal then must clearly fail and must be dismissed and the accused set at liberty.

2. It is not impossible that owing to the Public Prosecutor, Chittoor, not seeing that his case was properly proved by putting in evidence its foundation has led to a failure of justice. It is unfortunate that the learned Judge did not notice that no confessional statement had been proved and we have no doubt that due note of this observation will be taken in the Sessions Court by those concerned and possibly by the Inspector-General of Police for the guidance of officers in other cases; but these matters do not concern the accused who is on the other hand entitled to take advantage of them.

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