In Re: Thavamani

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Court : Chennai

Decided On : Mar-29-1943

Reported in : AIR1943Mad571; (1943)2MLJ13

Appellant : In Re: Thavamani

Judgement :

King, J.

1. The appellant here was the second accused prosecuted before the learned Sessions Judge of Ramnad for the murder of a woman named Meenakshi Achi on the evening of the 26th September last. The deceased was admittedly murdered in her flower garden about 1/1/2 furlongs away from the village. Her dead body was found on the 27th September in a well in the garden. Two persons were prosecuted for the murder. The first accused who was eventually acquitted, was the gardener employed in the garden. The second accused was an acquaintance of his, who was in need of money at the time. There is no direct evidence of the offence and there is no direct evidence from the post mortem certificate or the testimony of the doctor as to the cause of death. The body when found had marks of three punctured wounds upon the head; but those wounds by themselves according to the doctor would not be sufficient to cause death.

2. The principal evidence upon which the second accused was convicted comes from his own conduct. He has given a statement to the police as a result of which

he has informed them of the existence of P.W. 15, who confirms his story that the two accused sold to him (P.W. 15) part of a chain which had been worn by the deceased at the time of her death. The evidence of P.W. 15 and P.W. 16 taken together shows that the proceeds of the sale of this portion of the chain were divided between the two accused. There is also a confessional statement made by the second accused before the Taluk Magistrate of Tirupattur. He explains how he was induced by the first accused to assist the first accused in the killing of the deceased. After the first attack had been made upon the deceased he (second accused) prevented her leaving the garden and then seized her legs and held her tight while, according to the confession, the murder was completed. After she had died the first and second accused threw the body into the well. The significance of this confession which has been so signally confirmed by the discovery of P.W. 15 and P.W. 16 and the chain which was sold to the former, as proving a case of the commission of some offence against the appellant, has not been challenged in argument before us. But it is argued that the medical evidence taken in conjunction with the confession shows that there could not have been any intention on the part of the second accused to commit murder and therefore he cannot be found guilty under Section 302, Indian Penal Code. Great stress is laid upon the statement in the confession that the deceased had died and that her dead body had been thrown into the well. The doctor on the other hand gives evillence that the only marks of external injury which he saw were of injuries which were insufficient to cause death. It is accordingly argued that the second accused was under a misapprehension when he thought that the deceased was dead and that the blows which the first accused with his assistance had struck at the deceased had not therefore caused her death. Whatever therefore may have been the intention of the accused in striking those blows that intention had not been effected. The action of the appellant and the first excused in throwing the body into the well could not possibly be in pursuance of an intention to cause her death as they already believed that she was dead.

3. Reliance in support of this position is placd upon the decision in Palani Goundan v. Emperor : (1919)37MLJ17 . The learned Sessions Judge however Las refused to follow that ruling and has followed instead the later ruling reported in Kaliappa Goundcn, In re : (1933)65MLJ597 . It is true that in this later case there

was no definite plea by the accused that at the time When he put the body of the deceased upon the railway line he thought she was dead, whereas here according to the argument the confession does contain a statement equivalent to the expression of a belief that the deceased was already dead when the body was thrown into the well. But that is not the most important point of distinction between Palani Goyndan v. Emperor : (1919)37MLJ17 and Kaliappa Goundan, In re : (1933)65MLJ597 . The main point of distinction between the two cases is this, that in Palani Goundan v. Emperor : (1919)37MLJ17 there was never at any time an intention to cause death. The original intention was only to cause injury. The second intention was only to dispose of a supposedly dead body in away convenient for the defence which the accused was about to set up. In Kaliappa Goundan, In re : (1933)65MLJ597 , however and in the present case it is clear that there was at the beginning an intention to cause death. This intention was apparently completely carried into effect but in fact was not. Even if the intention at the second stage of the transaction had been merely to dispose of a dead body, as is pointed out in Kaliappa Goundan, In re : (1933)65MLJ597 the two phases of the same transaction are so closely connected in time and purpose that they must be considered as parts of the same transaction. The result of the actions of the accused taken as a whole clearly is to carry out the intention to kill with which they began to act. It seems to us that there is no satisfactory reason for distinguishing the facts of the present case from the ruling in Kaliappa Goundan, In re : (1933)65MLJ597 and that the learned Sessions Judge rightly relied upon that ruling in holding that, even if at the time when the woman was thrown into the well she was alive, and even if the appellant then thought her dead, he would be guilty of murder. The conviction of the appellant for murder must therefore stand. There are clearly no extenuating circumstances of any kind in this case and the sentence of death is the only one appropriate to the circumstances. We accordingly confirm the sentence and dismiss the appeal.