

Venkatasami and ors. Vs. the Queen

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Court : Chennai

Decided On : Aug-21-1883

Reported in : (1883)ILR7Mad102

Judge : Hutchins, J.

Appellant : Venkatasami and ors.

Respondent : The Queen

Judgement :

Hutchins, J.

1. These are appeals by different prisoners in a housebreaking case. The first and second prisoners were partners in an arrack-shop adjoining the premises which were broken into; the third and seventh, besides three others who were acquitted, were Police constables; the eighth and twelfth prisoners were Koravars. The first prisoner has appealed separately by Mr Michell; the second, third, seventh, and ninth to twelfth prisoners have forwarded a joint petition, stating that they did not commit the offence, but urging no special grounds of appeal. The tenth to twelfth prisoners pleaded guilty, and their appeal may be dismissed at once.

2. On behalf of the first prisoner, Mr. Michell has urged that certain confessions were inadmissible against him, as well as the mahazars drawn up after the discovery of various items of property, and many statements made on hearsay by

the Inspector of Police. There can be no doubt that these objections are well-founded, and, if the case had been tried by a jury, I should have been compelled to direct a new trial. These mahazars are not evidence, and can only be looked at for the purpose of testing the accuracy of the oral testimony. Several of them set out confessional statements which could not be proved at all, having been made to the Police, and not relating to the discovery of the property within the meaning of Section 27 of the Evidence Act.

3. Again, the Sessions Judge alludes to the confessions of the second, third, tenth, eleventh, and twelfth prisoners as implicating the first prisoner. So far as I can gather from the record, the confessions of the last three were not read at the trial, but that of the eighth prisoner, who pleaded guilty, was, and the Village Munsif was allowed to give an account of what the tenth had told him. It is quite clear that none of these were admissible under Section 30. These prisoners, as already stated, pleaded guilty. They were not tried at all and therefore were not 'being tried jointly for the same offence' with the other prisoners. They were convicted on their own plea, and the only course to make their statements admissible against the other prisoners would have been to remove them from the dock and call them as witnesses.

4. There are other objections to the statements made by the second and third prisoners, but I need not go into them just now as I am quite satisfied that the conviction of the first prisoner should be upheld on other grounds.

5. The case against the second prisoner is summed up by the Sessions Judge as follows: 'He made a full confession to the Village Magistrate, sixth witness, on the night of the 3rd January, and stated that he and the first prisoner had their share of the plunder; on the 5th he made a quasi-confession before the committing Magistrate to the effect that he had received those jewels from the Koravars, and that they had been hidden and produced by himself, not by the first prisoner; on the 16th February he stated that he had taken the blame on himself at first prisoner's request. There can be no doubt, both from his own statement, the evidence, and the confessions, that this prisoner was deeply implicated.' The confessions I consider inadmissible, and there is no evidence against this prisoner

apart from that about his own statements and conduct prior to, and at the time of, first prisoner's production of the jewels. There is great doubt whether the so-called confession to the Village Magistrate was admissible. Part of it, however, led distinctly to the arrest of first prisoner and discovery of the property, and that part seems sufficient, when taken with this prisoner's conduct at the time the jewels were discovered, and his subsequent statements to the committing Magistrate, to warrant the finding that he must have taken part in the offence.

6. As to the third prisoner, I have no doubt, though I exclude his confession, which, on the evidence of the seventh witness for the prosecution, I find to have been obtained under the inducement of a promise that he should be taken as an approver. This, however, does not get rid of the fact that he had some of the stolen property in his possession. I cannot accept his subsequent statement that this was part of the plot to make him an approver, or that he, an old constable, could have been taken in or would have consented to turn approver if not really guilty. There is also the evidence that he was out all night and returned before dawn with jewels.

7. Against the seventh prisoner, besides the fact that he was implicated by the second prisoner, there is the evidence of a very respectable witness that he turned him back in a most unusual manner and prevented his going near the house at the time the housebreaking was going on. He also has a large sum of money, for which he cannot account, and ten old Arcot rupees. The defence put in the statement I, which shows that many such old rupees were stolen. The case against this prisoner is not very strong, but strong enough, I think, to warrant his conviction.

8. Against the ninth prisoner I find no evidence at all. Some confession made by him on the 20th January is alluded to, but it has not been read or marked, and I cannot find it in the record. He also told the committing Magistrate that he had been beaten and promised to be made an approver, and in all the circumstances I should not be prepared to act on this confession alone, even if I could find it.

9. The result is that ninth prisoner's appeal must be allowed and that of the other appellants dismissed.

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