

In Re: Veerana Kone

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Court : Chennai

Decided On : Apr-14-1938

Reported in : AIR1939Mad593; (1939)2MLJ487

Appellant : In Re: Veerana Kone

Judgement :

Burn, J.

1. The appellant has been convicted by the learned Sessions Judge of Madura for offences under Sections 364, Indian Penal Code; 201 and 202, Indian Penal Code. He was tried along with two others for the murder of one Mayalagan on or about the 5th of May, 1937. Mayalagan left his home on the morning of that day with the intention of going to Vellaikundram. His mother P. W. 4 says that the appellant came at the time that her son was starting and accompanied him. Mayalagan did not come back home and after some days his mother went to Vellaikundram and made enquiries about him and when it was found that he had not been to Vellaikundram she questioned the first accused, the present appellant. He told her that her son had gone to, Madura. Search in Madura proved fruitless and when P.W. 4 again questioned the appellant he said that he' had gone to Melakottai. She could not find him there and when she questioned the appellant a third time he said that Mayalagan had gone to Ayyankottai. These varying statements of the appellant made P.W. 4 suspect him and on the 29th of May, she made a complaint to the Village Munsif that her son was missing and that this

appellant who had gone with him had given discrepant accounts of the places to which he had gone. The appellant was arrested on the 31st of May, and when questioned by the Sub-Inspector of Police, P.W. 11, he made a long confession in the course of which he described where the dead body of Mayalagan had been concealed. He took the Sub-Inspector and other witnesses to the place near Alagarkoil where there were borehole latrines and there he showed two borehole latrines in one of which a headless trunk and in the other a human head were found. It was impossible to identify the corpse since putrefaction had set in in every part, but along with it were found articles of clothing which were identified by the mother and sister of Mayalagan. It was also proved that Mayalagan had had his left tibia fractured in March, 1936, and that the left tibia of the corpse had been broken. It was therefore clear without the possibility of reasonable doubt that the corpse was that of Mayalagan.

2. Against the second and third accused, there was no evidence except the statement made by this appellant who alleged that he at their instance had persuaded the deceased to go towards the hills in order that they might kill him. He alleged that the murder had been committed by the second and third accused. The learned Sessions Judge acquitted the second and third accused but convicted the first accused of abducting Mayalagan in order that he might be murdered and sentenced him to ten years' rigorous imprisonment for that offence. He convicted him also under Section 201 for assisting in concealing the body of Malayagan and sentenced him to seven years' rigorous imprisonment. He convicted him also under Section 202 for intentionally omitting to give information of an offence of which he was legally bound to give information and sentenced him to six months' rigorous imprisonment.

3. The conviction under Section 364, Indian Penal Code, cannot be supported. There is no evidence of the commission of this offence except the statement Ex. K made by the appellant to the Sub-Inspector of Police. I cannot agree with the learned Sessions Judge that the whole of this statement was admissible under Section 27 of the Evidence Act. The preamble in which the appellant alleges that the second and third accused instigated him to take the deceased to the hills in order that he might be murdered cannot be said to have any relation to the

discovery of the corpse in the borehole latrines. The sole evidence relevant under Section 364 is that of P.W. 4 who merely says that the appellant accompanied her son when he was going to Vellaikundram. I therefore set aside the conviction under Section 364, Indian Penal Code, and the sentence of ten years' rigorous imprisonment. It is quite possible - indeed highly probable - that the accused did kidnap the deceased, but there is no legal evidence of it and therefore this appeal must be allowed in regard to that offence. The convictions under Sections 201 and 202, Indian Penal Code, are correct. The sentences are not excessive; they are confirmed.

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