

In Re: Guli Venkataswami

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Court : Chennai

Decided On : Nov-16-1949

Reported in : AIR1950Mad309

Judge : Panchapakesa Ayyar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 206, 209 and 213;
[Evidence Act, 1872](#) - Sections 114

Appeal No. : Criminal Revn. Case No. 1299 and Cri. Revn. Petn. No. 1237 of 1948

Appellant : In Re: Guli Venkataswami

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : G. Kondiah

Disposition : Petition dismissed

Judgement :

ORDER

Panchapakesa Ayyar, J.

1. This is a petition for setting aside the order of the District Magistrate, Anantapur, setting aside the discharge of the petitioner, who was accused 1 in P. K. C. No. 6

of 1948 on the file of the Stationary Sub-Magistrate's Court, Anantapur, under Section 209, Criminal P. C., and directing the petitioner to be committed to the Court of Session. Anantapur, under Section 437, Criminal P. C., to stand his trial for offences under Sections 302 and 380, Penal Code, or, in the alternative, for an offence under Section 201, Penal Code.

2. The prosecution case was briefly this. Komati Thimmakka, a lonely Vysya widow of sixty years, was eking out her livelihood by running a petty shop in Atmakur village, Anantapur district. She was wearing a gold nanu (necklace) worth Rs. 250 for years and had it on her even on the night of 27th February 1948, according to P. Ws. 3 and 9 her brother and his wife. That night, after she had closed her shop and gone to bed, five persons, who were all accused before the Stationary Sub-Magistrate, including this petitioner who was accused 1 were said to have gone to her house (which was near her shop) drunk, woke her up and asked her to sell some eatables, beedies and condiments to them on credit. On her refusing to do so, and on insisting upon cash payment, they are said to have fallen upon her and slapped her cheek and pressed her neck and dragged her from her house to a well in a tope, some hundred yards away, and pushed her into it after robbing her of her gold nanu. P. W. 2 found the deceased's corpse in the well the next morning. There was no nanu on her corpse. The petitioner gave a statement before the Magistrate stating that he had seen four others go to the deceased's house that night and ask her for the things on credit and, on her refusal, slap her on the cheek, press her throat and neck, rob her of her nanu, and drag her to the well and push her into it. He claimed to be a mere spectator of all these things and did not implicate himself in them. But he said that the nanu was given by the culprits to him, and produced it before the police in the presence of panchayatdars. P. Ws. 3 and 9 identified the nanu from among four nanus, as the deceased's, before the police. In Court, P. W. 9 identified the nanu as the deceased's but P. W. 3 said simply that it was similar to the deceased's.

3. The evidence regarding this petitioner consisted of three things. Firstly, there was his statement before a Magistrate, with the production of the nanu by him. There was also evidence that his dhoti had blood-stains on it. A third piece of evidence consisted in some of the prosecution witnesses, namely, P. Ws. 5 and 6

seeing him and the men he had named as the culprits near the house of the deceased on the night of 27th February 1948, and the evidence of P. W. 8 to her having seen some of the culprits named by him near the well that night. There were also injuries on the cheek and neck of the corpse corresponding to the blows on the deceased spoken to by the petitioner in his statement, and there were some injuries on the petitioner's body also.

4. The Stationary Sub-Magistrate, Anantapur, discharged all the five accused holding that the statement of the petitioner before the Magistrate was a self-exculpatory statement and so could not affect the other accused, or be taken into consideration regarding them, and that, even as regards the petitioner, he was not satisfied with the truth of that statement. No attempt was made by the police to file a revision regarding the discharge of accused 2 to 5 in spite of a statement given by accused 5 also to a Magistrate, as the evidence against them was such that no Sessions Court could be expected to convict them on that evidence. But the police filed a revision before the District Magistrate as regards this petitioner. The learned District Magistrate rightly remarked that, whatever the case might be with regard to the other four accused, there was a case for committal to Session regarding this petitioner, on the evidence before the Sub-Magistrate, and so set aside the discharge and directed his committal.

5. The learned counsel for the petitioner urged before me that the District Magistrate's order was wrong, and that the well-considered order of discharge passed by the Sub-Magistrate should not have been set aside by the District Magistrate especially as the Sub-Magistrate was, under the law, bound to sift the evidence and only commit persons against whom there was sufficient evidence to the Sessions Court.

6. The law regarding the powers of a committal Court is now well settled, and may be summed up in the following five propositions : (1) The Magistrate conducting the enquiry is not a machine or a mere post office to see whether there is any evidence against the accused or any of them. He is not bound to commit all those against whom any prosecution witness speaks regarding the offence, whether he is believed or not. He has to satisfy himself that there are sufficient grounds for

committing the accused for trial by a Court of Session, and it is his right and duty to weigh the evidence from that point of view. (2) He can, for that purpose, look not only into the depositions of prosecution witnesses but also into the depositions of the defence witnesses examined on behalf of the accused. (3) Section 209, Criminal P. C, does not bar a Magistrate from using his own knowledge and experience of men and affairs in judging and in weighing the evidence before him, (4) But he judges and weighs the evidence for purpose of deciding whether the evidence is such as a Judge or Jury could reasonably be asked to make it the basis of a conviction. If he comes to the conclusion that it is, it is his clear duty to commit. But, if he comes to the conclusion that the evidence before him is such that no Judge or Jury can possibly believe it, he has got the power, and indeed, it is his duty, to discharge the accused. If he finds that the evidence against the accused is totally unworthy, and that there are facts on the record which show that no offence in fact was committed, or that one of the offences charged was not committed, or that any one of the accused is clearly shown to have not taken any part in the offence, he must discharge the accused covered by those conclusions. Of course, if his conclusions are manifestly wrong, and not merely one of two possible views, his order can be set aside in revision. (5) But if, upon any reasonable view of the evidence, a conviction is possible, the case must be committed, and a Magistrate is not empowered to give the benefit of the doubt to an accused person in committal proceedings.

7. Applying the above tests, it is clear to me that the petitioner ought to have been committed, and that the Magistrate had no business to discharge him. That Komati Thimmakka died of homicidal violence, whether by throttling her or by throwing her into the well and causing her to drown after inflicting injuries on her, was clear from the medical evidence of the lady Doctor adduced in the case. Thimmakka's bed, found spread in her house, showed that she had been pulled out of her bed suddenly and taken away. There were also the pieces of evidence against this petitioner already mentioned. It is obvious that unexplained possession of a jewel of a murdered person will be evidence under Section 114, Evidence Act, not only regarding theft but also regarding the murder itself if the possession could not reasonably be got without committing the murder. It is a question for consideration whether Kommati Thimmakka, who had worn this jewel, her only jewel, for years

and years, would have allowed it to be taken from her when alive. Then there are the injuries on the petitioner and the bloodstains on the petitioner's clothes, and the evidence of his being found by P. Ws. 5 and 6 near Thimmakka's house shortly before her murder. All this evidence may or may not be enough to warrant a conviction ultimately. But it is obvious that the evidence is such that the Magistrate should have committed the petitioner to the Sessions Court and left it to the Court of Session itself to decide whether he should be convicted or acquitted. The Magistrate should not have taken on himself the task of discharging the petitioner in this case. This petition deserves to be and is hereby dismissed.

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