In Re: Doraiswami Udayan

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Court : Chennai

Decided On : Jul-26-1923

Reported in : 75Ind.Cas.987; (1923)45MLJ846

Appellant : In Re: Doraiswami Udayan

Judgement :

Odgers, J.

1. In this case one Duraiswami Udayan has been convicted of causing grievous hurt with a dangerous weapon to one Govindasami Udayan by cutting him on both hands and on the head with a sickle at Dharapuram on the 28th March 1922. A certain person named Thangaswami died in February 1922. The wounded man's grandfather and Thangaswami's mother's father were brothers. The accused is the mother's sister's son's son of Thangaswami. Thangaswami died leaving two widows called Parvathi Ammal and Chandrodaya Ammal. They had, apparently in accordance with the wishes of their husband, executed a release deed, Ex. M in favour of Govindaswami by which they released to him certain properties of their deceased husband in which they had a widow's estate. They refused to register it and Govindaswami had it compulsorily registered in the Dharapuram Sub-Registry on the 25th March 1922, three days before the occurrence in question. The reason for the unwillingness of the widows to register appears from Govindasami's deposition in the Court of the Stationary Sub-Magistrate of Dharapuram as due to the influence of Thangaswami's mother i.e., the mother-in-law of the widows. She

wished that Thangaswami and his wife should adopt the accused Doraiswami. There is thus, to my mind, ample ground for ill-feeling between the accused and Govindaswami on account of the registration of this release deed, Ex. M. One point in the defence theory may be noticed for convenience here, and that is, that Govindaswami has concocted this case against his distant relative, the accused, in order that he might become an undesirable person for the widows to adopt. I think this is extremely far-fetched and I must say that it is entirely unconvincing in the circumstances of this case.

[His Lordship then discussed the evidence and concludes]

2. In this state of the evidence it is impossible for me to say that the accused is not guilty. A legal point however has been taken and that is this. Mr. Govindaraghava Iyer points out that there are certain persons who, according to him would have been available to give evidence about the occurrence, but were not called. The first two are Pachaimuthu find Ramaswami Udayan, the father and uncle of the accused. They more or less assisted the accused because when they ran up they caught hold of Govindaswami. According to the Sub Inspector of Police. P.W. 4'Govindaswami in his dying declaration mentioned the names of Thondi Goundan, Ayodya Udayan, Kalimuthu Udayan and Subramania Udayan. These were examined by the police but they were not called. The learned Vakil cites in support of his argument two cases, In the matter of the petition of Dhunno Kazi I.L.R. 8 C. 121 and Ram Ranjan Roy v. Emperor I.L.R. 42 C. 422. In the former case it is laid down that all witnesses, who prove their connection with the transaction, connected with the prosecution should be called. It will be noticed from the deposition of P.W. 7 that four persons ran up from the south after Govindaswami had turned to run to the north. They may or may not have seen some part of what occurred. That is no ground for saying that these witnesses have proved their connection with the transaction in question, or that they may be able to give important information as to the subject of the charge. If such were proved then the only thing as laid down in the cases referred to that can relieve the prosecution from calling the witnesses is the bona fide belief that such witnesses would not speak the truth. The 2nd case is a case of murder and it was laid down that in a capital case the prosecution should take place before the Court the

testimony of all the available eye-witnesses though brought to the Court by the defence. Neither of these a considerations apply here on the other hand, the Full Bench of the Allahabad High Court has laid down in Queen Empress v. Durga I.L.R. 16 A. 84 that the Public Prosecutor is not bound to call as witnesses for the Crown any person whose evidence in his opinion is unnecessary. Compare also Emperor v. Reed I.L.R. 49 C. 277. I do not think that the opinions stated in the Calcutta cases have any application to the present. It seems to me that the case is adequately proved against the accused by the prosecution evidence tendered. If the four persons above named could in fact have spoken in favour of the accused, it is curious that they were not called, nor were their names mentioned as persons who knew anything about it by the accused either in his statement before the lower Court or in his appeal petition to this Court. He put in a written statement before the Sub Magistrate in which he alleges ill-felling on the part of Govindaswami on account of property and that he was himself dragged out of his house, beaten and produced before the police. There is no mention of any person whatever to whom this state of things would be known or who would be likely to have said anything material to the record. The accused called no evidence. For these reasons the conviction must be confirmed. The accused has been sentenced to 5 years' rigorous imprisonment and was originally charged under Section 307, but I. think somewhat mercifully the conviction was reduced to one under Section 326. There was a savage attack on a defenceless man and the wounds inflicted were of a very severe character. I am therefore not disposed to interfere with the sentence which will also be confirmed.