

In Re: Shekur

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Court : Chennai

Decided On : Aug-23-1943

Reported in : AIR1944Mad42; (1943)2MLJ389

Appellant : In Re: Shekur

Judgement :

Mockett, J.

1. In view of the course which we propose to adopt it is desirable that as little as possible should be said about this case at this stage.

2. The appellant was convicted and sentenced to death by the learned Sessions Judge of South Arcot for the murder of one Bapulal. Bapulal and the appellant were both cooks in the R.A.F. camp at Ulundurpet according to P.W. 1. On the evening of the 4th January between 5 and 6, Bapulal, the deceased man, performed his duties and served the evening meal and at 5 o'clock handed over the keys of the cookhouse to P.W. 2. Later that evening the appellant came to Sergeant Rowell who has gone to England and who was talking to P.W. 1, and some comrades. According to P.W. 1 the appellant made a statement to Rowell, which he himself could not understand. Acting on Rowell's instructions P.W. 1 and another man Holmes by name went to search for Bapulal. They had at least gathered that some ill had befallen him. He was found eventually with his hands and feet tied together and suffering from severe head injuries. According to P.W.

1, he asked the appellant who did this and the appellant beat his breast several times saying 'Mai Mara' which means ' I hit.' The witness P.W. 1 did not understand the meaning of ' Mai Mara ' but he was quite definite that those were the words used. Later in the evening the appellant was taken to P.W. 3 who is a Mohamedan and consequently speaks Urdu and he was questioned. To him he is said to have made a confessional statement. To P.W. 9 who was a Havildar in the 14th Garrison Company and to whom the appellant was handed over he is said to have made another confessional statement. During the course of the evidence P.W. 6 gave evidence testifying to the events of the evening when the appellant and the deceased were together. The lower Court appears to have allowed him to be cross-examined in chief with regard to a statement he had made in the Committing Magistrate's Court. An examination of that statement which was marked Ex. A reveals that the evidence given by P.W. 6 and his evidence in the Committing Magistrate's Court are dissimilar in certain important respects. It leaves open the possibility that the alleged confessional statement made by the appellant that he single handed killed the deceased does not represent the facts. The evidence of P. Ws. 5, 6 and 7 all point to the fact that the whole of the truth has not been placed before the Court. But the learned Sessions Judge instead of considering the evidence of these witnesses from the point of view of the defence preferred merely to state that he did not rely on them and put them on one side. The result of the case at the end of the evidence for the prosecution was that there was a retracted confession which the prosecution attempted to confirm by witnesses who by an irregular method which, we have referred to in the case of Ex. A are shown by the prosecution to be possibly unreliable. It, nevertheless, was a case against the appellant which required explanation. The procedure which is laid down in Section 342, Criminal Procedure Code--a procedure designed to give accused persons an opportunity to explain circumstances appearing against them--has been in substance disregarded in this case. The Committing Magistrate put the whole of the case for the prosecution in one long statement beginning--' You heard the witnesses depose that you and Bapulal were cooks in the R.A.F. quarters and Bapulal used to beat you at times as he was the senior cook.' Then he sets out the evidence of the witnesses for the Crown and ends up by ' What have you to say.' This is not a compliance with the mandatory provisions of the

Code. But the learned Sessions Judge seems to have been quite content to adopt it. He asked no detailed questions. Instead he said, 'You heard your statement before the Committing Magistrate read out to you. Is it correct,' and the appellant answered, ' Yes' He was asked whether he desired to add to it or modify it. He said 'No. ' This too, in our opinion, is not a compliance with Section 342. There were a large number of circumstances in this case which should have been put specifically to the appellant and a most important circumstance was his alleged presence with the deceased on the night and his alleged confessions made to various persons. In this state of the record we cannot possibly arrive at any satisfactory conclusion for or against the appellant. The trial is incomplete. The matter has given us considerable anxiety, but we consider that the proper and the most satisfactory course is to annul the conviction of the appellant and to direct that the case be tried de novo. This will be done by the learned Sessions Judge of Chittoor who, we are quite confident, will give the matter his earliest attention. We have endeavoured not to indicate any special view we hold in this case but merely to record that the record in its present condition is so unsatisfactory that we consider that the matter should be considered afresh. There is much in this case which needs elucidation.

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