

In Re: Muniyandi

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Court : Chennai

Decided On : Aug-26-1952

Reported in : AIR1954Mad196; (1952)IIMLJ745

Judge : Mack and ;Chandra Reddi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

Appeal No. : Referred Trial No. 45 and Cri. Appeal No. 306 of 1952

Appellant : In Re: Muniyandi

Advocate for Pet/Ap. : Y. Rami Reddi, Adv.;Asst. Public Prosecutor

Judgement :

Chandra Reddi, J.

1. The appellant has been convicted by the Sessions Judge of Chingleput of the offence of murder under Section 302 read with Section 34, I. P. C. and sentenced to be hanged. He has also been convicted under Section 392, I. P. C. and sentenced to seven year's rigorous imprisonment.

2. The case for the prosecution is very simple and lies in a very narrow compass. One Kalyanasundaram the deceased and P. W. 1 Balasubramaniam who were accountants in the firm of Cannon Dunkerly, cashed a cheque for Rs. 5600 at a bank in Madras and were proceeding to Thiruvottiyur for paying wages to the

employees of the firm. The deceased Kalyanasundaram was riding the cycle and P. W. 1 was seated on the carrier. The money bags were slung on either side of the handle bar. When they had gone a few furlongs from Thiruvottiyur two men appeared on the scene and asked these people going on bicycle to stop. One of the persons was armed with a revolver and the other with a knife. The person armed with revolver caught hold of handle bar of the cycle and asked them to stop. P. W. 1 jumped off the cycle. The deceased who was riding the cycle lost balance and he and the cycle fell down into the field by the side of the road. The deceased Kalyanasundaram shouted for help and was trying to get up when the man armed with the revolver fired four shots at him which resulted in his death instantaneously. Immediately the other person armed with a knife who is no other than the appellant in this case went to remove the bag. P. W. 1 tried to prevent it. Thereupon the appellant, cut him with it on his hand and snatched away the money bag and after this both the assailants ran away across the fields. P. W. 5 who happened to be working at the pumping shed about a furlong away heard the shots and ran towards the scene of offence. He saw the deceased fallen in the field. He also saw two persons running away at some distance. Within a few minutes after the incident a crowd had gathered there. P. W. 1 borrowed a cycle from one of the persons in the crowd and went to the Engineer in charge and told him of what had happened. The Engineer immediately came to the scene of occurrence and took the injured man in a car to the Stanley Medical Hospital. P. W. 1 who also accompanied the Engineer in the car got down on the way at Tiruvottiyur and gave a complaint, Ex. P-I in the police station. As the names of the assailants were not known to him they could not be stated in the complaint, Ex. P-I. Four months after the occurrence one Kuppuswami & the present appellant happened to be arrested in connection with another crime. On suspicion, that the appellant and Kuppuswami might have been the culprits in this case also an identification parade was arranged at which both P. W. 1 and P. W. 5 identified not only the appellant but also Kuppuswami as the culprits in this case. It is not necessary now for us to refer to Kuppuswami as he has been convicted for a similar offence under Section 302 and sentenced to be hanged and it is also stated that the sentence had already been executed.

3. That there was robbery in the commission of which Kalyanasundaram was shot dead does not admit of any doubt. The only question for consideration is whether the appellant was one of the persons that participated in the commission of the crime. The case for the prosecution so far as the identity of the assailants is concerned rests mainly on the evidence of P. W. 1. No doubt P. W. 5 claims to have identified the appellant, but as rightly pointed out by the learned Sessions Judge, it is not quite safe to place any reliance on the identification of the appellant by this witness because he could not point out the appellant at first and it was only in the second attempt at the same parade that he- was able to identify the appellant. But so far as P. W. 1 was concerned we do not see any reason for not acting upon his testimony regarding the identity of the appellant. He had ample opportunities of watching the face of the appellant and so he must have had an indelible impression formed in his mind. The learned Sessions Judge who had occasion to see the appellant, in the dock states in his judgment that the appearance of the accused is striking enough to leave a clear impression upon one's memory. In these circumstances, we see no reason to reject the evidence of P. W. 1 regarding the identity of the appellant. It follows, therefore, that the appellant was one of the persons who took part in the crime committed on 22-4-1950.

4. The next question is whether the appellant is guilty of the offence of murder under Section 302 read with Section 34, I. P. C. It is argued by Mr. Rami Reddi that unless it has been proved by the prosecution that there was pre-meditation or pre-arrangement between the two assailants to kill the deceased the appellant cannot be convicted of an offence under Section 302, I. P. C. read with Section 34, I. P. C. In our opinion, there is not much substance in this contention. When two persons start together for committing robbery and one of them is armed with a revolver and the other with a knife we may presume that the intention of these two persons is to use the weapons if the necessity should arise and it could be postulated that the act of shooting with the revolver was committed in furtherance of the common intention of both the persons. It is not necessary in order to bring into play Section 34, I. P. C. in such a case, to establish that there was a pre-arranged plan for the murder of the victim in the course of committing the offence of robbery. If authority is needed for this position, reference may be made to -

'Barendra Kumar Ghosh v. Emperor' , which was followed in - 'Ramaswami v. State' : AIR1952 Mad411 by one of us. We may mention here incidentally that it was in this case that Kuppuswami was sentenced to be hanged for the offence under Section 302, I. P. C, and the present appellant was sentenced to transportation for life for the offence under Section 302 read with Section 34, I. P. C. What emerges from this discussion is that the appellant is guilty of the offence under Section 302, I. P. C. read with Section 34, I. P. C. So far as the conviction of the appellant under Section 392, I. P. C. is concerned it is not seriously challenged. Therefore both the convictions and the sentence under Section 392, I. P. C. have to be confirmed.

5. The further point for consideration is whether the extreme penalty of law is to be imposed upon the appellant for the offence of murder. Having regard to the fact that it was Kuppuswami who fired the shots from a revolver and that the injury caused to P. W. 1 by the appellant was of a simple nature we feel that the ends of justice will be met by reducing the sentence of death into one of transportation for life. These sentences will run concurrently and also with the sentences passed on the appellant in two other cases.

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