

In Re: Manjunatha

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Court : Chennai

Decided On : Nov-30-1908

Reported in : 4Ind.Cas.1103

Judge : Miller and ;Munro, JJ.

Appellant : In Re: Manjunatha

Judgement :

1. The evidence against the appellant Manjunatha was to the effect that he was seen a week before the offence along with Gunda at the temple, that he went with the thieves of whom Gunda was one to commit the offence--this is spoken to by Gunda alone--and that he was seen running from Rukmani's house on which occasion he dropped a bundle which was found to contain a coat in the pocket of which was a Spoon which was identified as forming part of the property stolen from the temple.

2. The principal evidence is thus the discovery of the stolen property in the possession of the accused--and as to this there was a question whether the accused was the man who ran from the house and dropped the bundle. The Sessions Judge directed the jury on this point in the following words:

The evidence to show that the man who was running was Manjunatha is that of the 2nd, 6th, 4th and 8th prosecution witnesses. You will observe that M. Os. 7, and 8 to 13, the spoon and the puja saman connected some of the inmates of the

house with this offence. The question who was so connected is for you to consider. The prosecution evidence is to the effect that the man who was running away was Manjunatha. The 2nd prosecution witness said it was Manjunatha. The evidence of 6th and 7th prosecution witnesses was that it was called out that the man was Manjunatha and that the women of the house said that it was Manjunatha. The evidence of the 8th prosecution witness the Head Constable was that the man was Manjunatha and that he had known him before. The evidence of all these witnesses is that the bundle fell down when he ran away. If you believe all this evidence there is no doubt that the discovered properties connect Manjunatha with the offence, and again in paragraph 9 he says: The second part of the evidence against him is his identification by the 2nd prosecution witness, Vastenaya, by Anantha Bhandani (6th prosecution witness), Jamarla (7th prosecution witness) and the Station House Officer (8th prosecution witness) at Rukmani's house and the discovery of the marked spoon which was found in the pocket of his coat and two puja articles in the same house.

3. Now, as paragraph 6 shows, that 6th and 7th witnesses did not identify Manjunatha; at the most the evidence they give could be used to corroborate a witness if it be shown that a witness examined at the trial did say at the time of the visit to Rukmani's house that the man running was Manjunatha. Rukmani was not examined and Bayyu the other woman who was examined for the defence did not admit (apparently the question was not put to her in cross-examination) that she said that the man who was running was Manjunatha. She now says it was some one else.

4. The summing up of the Sessions Judge was calculated to leave upon the minds of the Jury the impression that Manjunatha was identified by four persons whereas in fact he was identified by the evidence of two only and, therefore, to mislead them.

5. Again in the passages of the summing up which are quoted, the Sessions Judge invite the jury to treat the puja saman as property found in the possession of the accused. This property was found in Rukmani's house which is not the house of the accused, but a house in which according to Gunda (prosecution 9th witness)

he was lodging. He did not attempt to carry the property out of the house. As the evidence stands the Sessions Judge should, in our opinion, have told the Jury that there was no evidence on which they could find that it was property found in his possession and as regards the spoon the Sessions Judge should not have told the Jury that if they believed the evidence, the discovery of the property without doubt connected the accused with the offence. He should have left it to them to say whether in the circumstances in which the property was found including the period which had elapsed after the theft, they could find that it was found in the possession of the accused and that so soon after the theft as to enable them to presume that he was guilty of the theft.

6. There seems, beyond the fact that the coat in which the spoon was found was in the bundle dropped by the man who ran away, nothing to show that it was his coat and the Jury should have been told this and left to infer for themselves whether in the absence of explanations from the accused the spoon was in his possession and he knew whether he was carrying it off.

7. It is impossible for us to say that these errors in the summing up of the most important evidence in the case have not misled the Jury and induced them to give a verdict which, had the case been correctly put before them they would not have given and we are not prepared on the evidence to decide ourselves that this verdict is the only one which they could have properly given.

8. We set aside the conviction and direct the re-trial of the appellant.

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