

In Re: Vellai Pillai

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Court : Chennai

Decided On : Mar-28-1951

Reported in : AIR1952Mad322; (1951)2MLJ53

Judge : Panchapakesa Ayyar, J.

Acts : [Evidence Act, 1872](#) - Sections 106

Appeal No. : Criminal Revision Case No. 1301 of 1950 and Criminal Revision Petition No. 1229 of 1950

Appellant : In Re: Vellai Pillai

Advocate for Def. : State Prosecutor

Advocate for Pet/Ap. : V. Rajagopalachariar and ;B. Santhalingam, Advs.

Judgement :

ORDER

Panchapakesa Ayyar, J.

1. I have perused the records and heard Mr. V. Rajagopalachariar, for the petitioner and the State Prosecutor 'contra'. Mr. Rajagopalachariar urged that the lower Court erred in applying Section 106 of the Indian Evidence Act to the facts of this case and relied on the ruling of the Privy Council in 'Attyagalle v. The King', 44 Mad L W 86. I have looked into that ruling. It relates to an illegal operation on a

woman for abortion by a doctor called Attygalk and says that merely because the doctor was alone with the lady in the same room where the abortion took place, he cannot be asked to prove that he did not perform an illegal operation for abortion on her. But it is obvious that the facts, here, are quite different. A woman usually delivers her own baby or has her own abortion. Any person, even a doctor, present alone with her at 'the time of the abortion, cannot be said to have that fact specially within his knowledge, as she is the person having the fact especially within her knowledge. Here, corrugated sheets are in question, and they cannot disappear by themselves. So the petitioner, to whom they had been delivered and which he wanted to book by signing in the requisite form and eventually failed to book, was in especial knowledge and was bound to explain their missing, under Section 106 of the Indian Evidence Act. As he failed to explain, and as he was a 'carrier', the presumption was rightly applied against him and he was convicted properly under Section 407 I.P.C. I confirm the conviction. I may add that the Privy Council itself did not give leave to appeal in the Attygalk case.

2. It was urged next that the sentence was too severe, under all the circumstances, & that as there is an independent civil liability on the part of the petitioner for the goods, I might reduce the sentence. After hearing the learned State Prosecutor also on the point, I reduce the sentence to the period of rigorous imprisonment already undergone and a fine of Rs. five hundred (Rs. 500), or, in default, further rigorous imprisonment for three months. Time is given till 3 p. m. on 20th April 1951 to pay the fine into the lower Court.

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