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In Re: Maya Basuva and anr.

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Court : Chennai

Decided On : Dec-13-1949

Reported in : AIR1950Mad452

Judge : Govinda Menon and ; Basheer Ahmed Sayeed, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 300

Appeal No. : R.T. No. 97 of 1949

Appellant : In Re: Maya Basuva and anr.

Advocate for Def. : Crown Prosecutor for the Public Prosecutor

Advocate for Pet/Ap. : V. Rajagopalachari, ; R.V. Raghavan, ; P.S. Balakrishna Aiyar and ; P.S. Ramachandran, Advs.

Judgement :

Govinda Menon, J.

1. Accused 1 and 2 in S. C. No. 107 of 1949 on the file of the Court of Session, Coimbatore division, have been convicted and sentenced to death for the murder of one Giri Gowda just after dusk on 23rd October 1948 at the village of Doddinduvadi in Coimbatore district. They were also convicted under Section 201, Penal Code, for causing disappearance of the evidence of murder. There were two other charges, viz., that against accused 1 with having caused simple hurt to

Siddha Chetty (P. W. 3) and accused 2 with having caused simple hurt to Siddha Gowda (P.W. 1). For these minor offences, accused 1 was sentenced to rigorous imprisonment for two months and accused 2 also to rigorous imprisonment for the same period. Accused 3 who is the appellant in C. A. No. 660 of 1949 was found guilty of an offence under Section 201, Penal Code along with accused 1 and 2 and sentenced to rigorous imprisonment for five years. The referred trial and the appeals by the accused have been heard together and we have heard arguments from Mr. V. Rajagopalachari for accused 1 and 2 and from Mr. P.S. Balakrishna Aiyar for accused 3. As the facts and circumstances are so interconnected that it will be convenient to deal with the two appeals to gather, we do not intend to deliver separate judgments in each of the appeals.

2-4. Shortly put, the prosecution case is that accused 1 and 2 were on inimical terms with the deceased Giri Gowda and therefore they, along with a number of other people, lay in wait on the evening of 23rd October 1948 when Giri Gowda was returning from Kollegal to his village, waylaid him, dragged him out of the jutka in which he was travelling and then accused 1 stabbed him and accused 2 beat him. Thereafter he was carried to nearby place where again he was stabbed and beaten as a result of which he expired. It is further stated that after sometime both accused 1 and 2 exclaimed that Giri Gowda was dead and there, fore they should carry him away. The evidence in the case further proves that he was carried away from the scene of crime and later on has not been heard of at all. [After setting out the case for the prosecution and reviewing the evidence, His Lordship proceeded :]

5. Regarding the first argument that corpus delicti has not been produced, Mr. P. S. Ramachandran Aiyar in his reply invited our attention to a decision of the Allahabad High Court reported in Bandhu v. Emperor, (1934) Cri. L. J. 900 : A. I. R. 1934 ALL. 662. The learned Judges Stuart and Sulaiman JJ., were of opinion that where a man was brutally attacked with lathis by several persons and after being beaten into unconsciousness was removed by the assailants and was never seen again it is not possible to hold that the man is dead and, therefore, the assailants could not be held guilty of murder. In our opinion the legal position has been too widely stated in this decision. The learned Public Prosecutor invited our

attention to passages in the judgment of the Allahabad High Court in Empress of India y. Bhagiratha, 3 ALL. 383 and also to the statement of law contained in Archbold'a Criminal Pleading, Evidence and Practice. 31st Edition, at p. 365. He also submitted that statements in Gour's criminal Law, Vol. II at p. 1020 are helpful for his contention. We need hardly add that it is not obligatory for proving the death of an individual that his dead body should be recovered. In the footnote at p. 865 of Archbold'a Criminal Pleading, Evidence and Practice, 31st Edn., we find the following observations:

'Sir H. de Villiers C. J., said, I never understood the law as to the corpus delicti to go so far as to hold that where witnesses swear that they saw the person shot by means of a gun, and where they saw the deceased actually dying, a jury may be called upon to say that there is no proof of death whatsoever. I have always understood this rule as to corpus delicti to apply to those cases in which death is relied upon from the fact of the disappearance of the deceased.'

The observations in Empress of India v. Bhagiratha, 3 ALL. 383, are to the effect that the mere fact that the body of the murdered man has not been found is not a ground for refusing to convict the accused person of murder. Let us look at the facts of the case applying the principles which have been mentioned above. We have the fact that the deceased was brutally stabbed and beaten at one place after being dragged out of the jutka. He was carded away by the two accused and others to another locality not far from the original scene of the assault and there also stabbed and beaten. It is further stated that the accused finding that the deceased man had expired said that the body should be removed as he had already died. If we believe the evidence of P. Ws. 1, 3 and 4 the question about the absence of corpus delicti cannot be a matter of very serious consequence. What we have, therefore, to see is whether the evidence of P.Ws. 1, 3 and 4 can be believed. It is undoubted that P. Ws. 1 and 3 have received injuries and they are positive that the persons who inflicted those injuries are accused 1 and 2. They depose that in the course of the same transaction the accused beat and stabbed the deceased as a result of which he died. P. W. 4 was also in the jutka. But having got afraid, he went a little distance away and that was the reason why he did not receive any injuries. We have carefully perused the depositions of P.

Ws. 1, 3 and 4 in the light of the criticisms regarding their veracity addressed to us by the learned counsel. It seems to us that despite the fact that the complaint was not seat to the village munsif immediately we cannot find any justification for not accepting the evidence of these witnesses in the main. They have received injuries and within a few hours the names of the assailants have been mentioned in the complaint made to the village munsif. The argument of the learned counsel is rested on the fact that nobody took any action in informing the village munsif earlier and it is argued that P. W. 6, a relation of the deceased, who was in a nearby place and was one of the persons who witnessed the murder after the torch was flashed should at least have taken steps to inform the authorities about the attack. If we accept the evidence of P. Ws. 1, 3 and 4, for not accepting which we do not have any reason whatever, the fact that P. W. 6 did not take any steps would not make the prosecution story unacceptable. We are satisfied that the story put forward in its broad outline by P. Ws. 1, 3 and 4 is true.

6-7. [His Lordship considered the evidence of P. Ws. 8 to 12 and concluded]:

8. Accepting the evidence of P.Ws. 1, 3 and 4, we confirm the conviction of accused 1 and 2. But in view of what we have stated above, regarding other persons also being in this nefarious act it seems to us that the ends of justice would be met by reducing the sentence to transportation for life. The other convictions and sentences passed on accused 1 and 2 will be confirmed.

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