

In Re: Botcha Ramudu and anr.

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Court : Chennai

Decided On : Jul-13-1909

Reported in : 4Ind.Cas.1051

Judge : Ralph Benson, Offg., C.J., ;Miller and ;Abdur Rahim, J.

Appellant : In Re: Botcha Ramudu and anr.

Judgement :

Ralph Benson, Offg., C.J.

1. I think that the appellants, Botcha Ramudu and Durgasi Ramudu, have been rightly convicted of the murder of the little girl, Killari Mallamma, aged 8 or 9 years, for the sake of her jewels on the 26th December last at Alaparthi. That the child was murdered for the sake of her jewels admits of no doubt. Her body was found on the morning of the 27th in a nulla a little distance from the village, with several punctured wounds, covered with blood, the neck twisted and stripped off the jewels she was wearing (except two rings which could not easily be removed). The lobes of the nose were torn, evidently in removing the nose rings.

2. The accused are wandering basket-makers who had come to the village some ten days before the offence. The direct evidence against the accused is that of another little girl Pagi Mallamma, aged about ten years, who says that she and the deceased were taken by the two accused to gather tamarinds at a little distance from the village, that the two accused there killed the deceased by stabbing her

with their dabbanams (long nail-like irons used in making baskets) and by twisting her neck, and that they then took her jewellery. She says that they gave her a gold nose ornament and threatened to kill her also if she told any one. This little girl when questioned by the parents of the missing girl on the night of the 26th, said that she knew nothing about her, and three days afterwards when questioned by the Police in the presence of the accused, she again denied all knowledge. She explains this by saying that she was afraid owing to the threats of the accused. Two days later, however, on being further questioned by the Karnam and Village Magistrate she told the story which she now gives. The Judge says that she is an intelligent girl and gave her evidence clearly, and he believed it to be substantially true. It would, however, be obviously unsafe to accept her story unless it is very strongly corroborated by other evidence. But this corroboration is, I think, forthcoming. On the day after the murder the girl Pagi Mallamma left her aunt's house in Alaparthi and went to another relative named Thammandhora in Peddur about a mile and an half away. When she, on the 1st January 1909 told the story of the murder, she said that the jewel given to her by the accused had been hidden by her in Thammandhora's house, and when taken there she produced it. It is M.O. No. III, and is identified as one of the nose-rings worn by the deceased before her murder. Acting on the information obtained from Pagi Mallamma, the Village Officers and others again questioned the accused and told them it was no use now to deny their guilt. The accused then took them to the stream close to the scene of offence and from the sandy bed of the stream the 1st accused dug up a bundle containing the anklets (M.O. Nos. XV and XVa), the necklace (M.O. No. VI), a nose ornament (M.O. No. IV) and earrings (M.O. Nos. I and Ia), and the 2nd accused produced another nose ornament (M.O. No. V) from another part of the sandy bed. All these articles are proved to be the jewellery which the murdered girl was wearing before her death. The Chemical Examiner found mammalian blood on the nose rings (M.O. Nos. IV and V) given up by the 1st accused and 2nd accused respectively, as well as on the nose ring given up by the witness Pagi Mallamma (M.O. No. III). The accused have not attempted to explain their possession of the murdered girl's jewellery. They simply deny that they gave them up and allege police concoction. The finding of the jewellery is, however, spoken to by the Village Officers and others who appear to be respectable men and whom

the Sessions Judge and Assessors believed to be speaking the truth. Unexplained possession of the jewellery of the murdered child, shortly after the murder, taken with the other surrounding circumstances proved in this case is good evidence that the accused are guilty of the murder. *Queen-Empress v. Sami* 13 M. 426. Among these circumstances may be mentioned the finding of mammalian blood on some of the jewels and on the cloth of the 2nd accused when he was arrested on the 28th December 1908. Apart, therefore, from the evidence of the little girl, there is, in my opinion, sufficient evidence to support the conviction. It has been suggested that the jewels are of a common kind and that there are no special marks on them by which they can be identified, and that concoction by the police would, therefore, be easy. It must, however, be remembered that immediately on the finding of the body on the morning after the murder, before the arrival of the police and before any suspicion fell on the accused, the parents of the girl gave a list of 3^{the} jewels she was wearing and which were missing from the body. A description of the jewels is embodied in the Village Magistrate's report written for him by the Karnam, and all the jewels given up by the two accused correspond to those described in the report. The number and variety of these jewels, made partly of gold, partly of silver, partly of German silver and partly of coral and lac, would render it most difficult for the police to fabricate them, and then pretend that the accused had given them up. This variety and number also make it impossible to believe that the parents of the girl (especially her mother), and the goldsmith who procured most of them for her, could be deceived as to their identity. Nor is there any sufficient reason for believing that the Village Magistrate, and the Pettandar and the Karnam, as well as the father of the girl, could have been deceived, or suborned by the police and induced to give false evidence with regard to the accused giving up the jewels from the bed of the stream. The Karnam is a Brahmin, with an income from his land of Rs. 3,000 a year, and lives three miles from Alaparthi. He is not a man likely to be deceived or to be subject to police influence, and, indeed, there is nothing to suggest that he or the other witnesses I have referred to were subject to any such influence.

3. No doubt in the examination of the girl P. Mallamma there is a passage which may be regarded as suggesting that she was tutored, she says 'then the Inspector and Karnam questioned me.' They said 'it seems the girl was taken, and a Kammi

was given to you. Please tell about it.' I do not think that too much stress should be laid on these words. This little girl before giving evidence in the Sessions Court had been examined several times by the authorities and was no doubt also often questioned by other persons who had heard what her story was, and who would naturally address her in such words as she attributes to the Inspector. She might, therefore, well be inaccurate as to the exact form in which she was questioned by the Inspector on the particular occasion to which she was then referring, and that this was so is clear from her cross-examination in which referring to the same matter, she said 'the Inspector questioned me. I don't recollect what words the Inspector used when he questioned me, He asked me to, tell about the andelu and other things.' I, therefore, do not think that this sentence affords sufficient reason for disbelieving the girl, or for holding that the case against the accused has been concocted by the police. The nature of the punctured wounds supports the girl's evidence that they were caused by the dabbanams of the accused. The fact that none of the dabbanams taken by the police, though sent to the Chemical Examiner, were found to have blood marks, rather goes to negative the suggestion that the case against the accused was concocted by the police. If it were concocted by them, it would have been easy to have smeared one of the dabbanams with blood and thus to greatly strengthen the case against the accused, Nor do I think that the hesitation of the girl's father in answering some of the questions put to him regarding the time when the jewels were found indicates that he was tutored. Had he been tutored he would, no doubt, have been ready with an answer to such obvious questions. On the whole I think that the Judge and Assessor have rightly appreciated the evidence in the case and that the conviction should be confirmed. It was a brutal murder without extenuating circumstances of any kind. I would, therefore, confirm the sentences of death passed by the Sessions Judge, but as my learned brother takes a different view, the case must be laid before another Judge for decision.

Abdur Rahim, J.

4. The Sessions Judge of Vizagapatam concurring with the assessors found the two prisoners Botcha Ramudu and Durgasi Ramudu guilty of the charge of having murdered a girl of about 8 or 9 years, named Killari Mallamma and has submitted

the proceedings to this Court under Section 374 of the Code of Criminal Procedure for confirmation of the sentences of death passed by him. The prisoners have also preferred an appeal against the convictions and sentences.

5. The body of the deceased child was discovered on the 27th December last at about 10 A.M. lying in a nullah near a large tamarind tree a few yards outside the village of Allaparthi where she lived with her parents the Prosecution Witnesses Nos. 1 and 2. The body was besmeared with blood and had on it one incised and, three punctured wounds, the right side of the neck was swollen blue, and both the lobes of the nose were torn. According to the report (Exhibit B1) of the Village Munsif of Allaparthi, dated the 27th December, there were missing from the person of the deceased a necklace of false corals (M.O. No. VI), three nose-rings (M.O. Nos. III, IV and V), two German silver anklets (M.O. Nos. XV and XVa) and two brass wires for the ears (M.O. Nos. I and Ia) and it is stated in a later report (Exhibit D) of the same Village Munsif, dated the 1st January that the parents of the deceased further mentioned as missing from the dead body one silver ring (M.O. No. X) and one German silver ring with a silver knob (M.O. No. XII) which they had forgot to mention at the time of the first report. The ornaments found on the body were one waist thread with pies, 2 earthenware bangles, 1 muvvalu or ringing beads as it is described, a German silver finger ring, a copper finger ring and two German silver anklets. In the opinion of the Hospital Assistant who performed the post mortem, the death of the girl Killari Mallamma was due to loss of blood and asphyxia consequent on the pressure on the neck, and there can be no doubt that she was murdered for the sake of the more valuable of her jewels which, however, were not altogether worth more than Rs. 3. Killari Mallamma was left at home on the 26th December by her parents when they went out to harvest cholum and was missed by them in the evening on their return. They searched for her that night and it was on the next day that her dead body was found as stated.

6. It would seem that from the first, suspicion of the Village authorities and the police was directed towards the accused as being the perpetrators of the crime, but the only grounds for the suspicion were that the accused were new comers in the village and the nature of some of the wounds on the corpse showed that they were caused by some pointed weapon and the accused, whose occupation is

basket making, used dabbanama --a sort of long nail in manufacturing baskets. It also appeared that the accused had gone out of the village on the 26th, but evidently in order to sell baskets in the usual course of their business. These facts would appear to afford rather a flimsy ground for suspecting the prisoners as having been connected with the crime, but the case of the prosecution is that other facts subsequently discovered through one Pagi Mallamma, a girl of about 9 years of age (Prosecution Witness No. 3) showed that the suspicion was justified, However conjectural it might have been to start with. The story of the murder as told by the witness is, that she and the deceased were paying together on the thrashing floor of the former's aunt, when the two accused came and promising to give them some tamarind fruit took them both to the tamarind tree near which the corpse was subsequently found, made Prosecution Witness No 3 sit near some bushes and took the deceased behind other bushes close by. The Prosecution Witness No. 3 then heard cries of the deceased, and on going near the bushes saw the 2nd accused stabbing the deceased, while the 1st accused was holding her legs. Seeing this Prosecution Witness No. 3 began to cry and was running away when the 1st accused brought her back and made her stand on the bank. She also says that when the deceased was struggling, the 2nd accused twisted her neck. She names some of the jewels which she says the accused took away from the person of Killari Mallamma and also one of the jewels which they did not; take. Then the accused after having washed their hands and feet gave a gold nose ring M.O. No.III of Prosecution Witness No. 3, and asked her not to tell any one, threatening her at the same time that if she gave out what she had seen they would stab her as well. The story of this witness is said to be corroborated by the recovery of M.O. No. III from her possession and of some other ornaments from the possession of the accused. The discovery of the jewels is alleged to have been made in this way. All the children of the village were questioned by the police on their arrival at the scene including Prosecution Witness No. 3 with whom the deceased was in the habit of playing, but who not being found in the village was traced to another village in the house of one Thammandhora. She at first denied all knowledge of Killari Mallamma's death but after repeated questionings told the above story and produced the nose-ring which the accused had given to her from the eaves of Thammandhor's hut in which she had concealed it. Thereupon it is

said the accused, who at the time were under the surveillance if not in actual custody of the police, were told that it was no use their keeping the matter secret any longer as the jewel which they gave to Prosecution Witness No. 3 had been recovered. The first accused then, it is alleged, took out a smaller bundle containing a pair of German silver anklets and the coral neck-lace and a smaller bundle containing a gold ring and brass ear-rings (M.O. Nos. XV, XVa, VI, IV, I and Ia) from the sand of the river bed, and the 2nd accused produced a nose-ring (M.O. No. V.) in a small cloth from another place in the river bed. On the following day the silver ring (M.O. No. X) was found in sand near the lodging of the accused the place being shown by the females of the accused, and the German silver ring (M.O. No. IX) was produced by the 2nd accused's son a boy of about 14 years from near a tobacco plant where it had been secreted by him.

7. Considering the deposition of the Prosecution Witness No. 3 by itself independently of the discovery of the jewels, it would be impossible to place any reliance upon it having regard to the conflicting character of the statement she made at different stages of the investigation. To the father of the deceased who questioned the witness the very evening the deceased was missed, she said that they both had gone to some fields at a distance to play and both returned and that she did not know what became of her, and to Prosecution Witness No. 2 mother of the deceased she said that she did not know anything about the deceased. To the Inspector and the Karnam also who questioned her about three days afterwards, she at first disclaimed all knowledge as to how the deceased met by her death. Nor did she tell either her aunt or Thammandhora anything about the murder. The explanation given is that she was all along in fear of the accused's threats and the case of the prosecution is that it was by persistent questionings and coaxings that she gave out the truth. Obviously a story told by a child of nine under such circumstances has to be irresistibly corroborated by other evidence before one should be justified in acting upon it.

8. The corroborative evidence in the case as already indicated is furnished by the alleged discovery of the jewels. In this connection it should be remembered that the jewels Worn by the deceased were all of a very ordinary type and bore no marks by which they could be identified with any degree of Certainty. They are

according to the evidence such as are commonly worn by village girls of the poorer class. Yet if it were found that the story of the recovery of the jewels was straight forward and above suspicion, I should be prepared to accept the testimony of Prosecution Witness No. 2 the mother of the deceased as to their identity. The case on this point rests on the basis that the police found out by questioning Prosecution Witness No. 3 that she was in possession of the nose-ring (M.O. No. III), and it was after she produced at that the accused on being confronted with this discovery, produced the other jewels (see Prosecution Witnesses Nos. 7, 10, 11 and 12). But this case is quite inconsistent with what the Prosecution Witness No. 3 herself says. She says.... 'The Inspector and Karnam questioned me.... They said, it seems the girl was taken and a Kammi (nose-ring) was given to you. Please tell all about it. Then the accused were present. I did not then tell because the accused were there and nodded their heads.' Now this statement which is made in examination-in-chief and is not explained would show that it was not the Prosecution Witness No. 3 who first enlightened the police with the present story but that the police themselves purported to be already in independent possession of at least a material portion of the story. Now according to the evidence, except this witness and the accused no one else knew of what occurred. How did the police then find out what had happened before either the witness or the accused told them anything. If it be said that what the police told Prosecution Witness No. 3 was a mere feeler, then it was an extraordinary piece of coincidence that they should have mentioned the very ornament which she produced afterwards, although the deceased was robbed of a number of other jewels. I am not prepared to act upon such a surmise. The examination-in-chief of 1st Prosecution Witness, father of the deceased regarding the finding of the jewels also throws considerable suspicion on the bona fides of this part of the case of the prosecution. When asked as to where particular jewels were found he could not answer the questions except after long hesitation and with apparent reluctance. Regarding M.O. No. III which is said to have been produced by the 3rd Prosecution Witness he says that it was shown to him by the police in the river and then that the 1st accused took it out from the river. It further strikes me that if the accused murdered the girl for the sake of her jewels and went away from the village the same evening, one would expect that they would take her jewels with them and dispose of them. In my

opinion, therefore, the evidence regarding the production or discovery of the jewels is not satisfactory and there being no other corroboration of the story of the 3rd Prosecution Witness, I would acquit the accused of the charges against them and set them at liberty.

9. The case came on again for hearing, under the provisions of Section 429 of the Code of Criminal Procedure, before His Lordship Mr. Justice Miller, and His Lordship delivered the following judgment.

Miller, J.

10. Against the Prosecution Witness No. 3, it may be suggested that the fact that the suspicion of the villagers and police had fallen upon the accused person before she made her statement and the fact that she made that statement not to her relations but to the police who were investigating the case make it difficult to accept her evidence as sufficient, even supported by the production of the nose-ring in Thammandhora's house. But the production of that property goes far to support the case that this witness did know something of the murder and had failed to reveal it till pressed by the police, and so to render valueless the argument that if she had known she would have told.

11. I am unable to see any reason to suppose that the police had selected this little girl as a witness, and have induced Tammandhora (Prosecution Witness No. 6) to give false evidence to support their concoction: his statement and hers do not tally in every minute particular, but I do not on that account find sufficient reason to hold that the story of both is entirely without foundation. And if it is not, then it is certain that the Prosecution Witness No. 3 did know something of the murder and did conceal it, The production, of the jewel at Thammandhora's house is, therefore, a fact of great value, though it might not be sufficient by itself to conclude the case against the accused, for suspicion had already fallen upon them, and it might not be difficult to persuade the girl to support that suspicion by naming them as the murderers.

12. But the production of the rest of the jewellery by the accused is to my mind satisfactorily proved though there may be some slight reason to doubt whether the

rings found on the 2nd of January were part of the deceased's jewellery, there is so far as I can see no reason to doubt the identity of the remainder. I cannot accept the view that the little girl's statements as to the question put by the Inspector to her afford any indication that this part of the case is false. The witness is a mere child and it is probable that she had no very precise recollection of the question put to her--this she says herself, and that being asked what those questions were she answered without much consideration.

13. There is good evidence to identify the jewellery produced by the accused and I accept that evidence. It is sufficient apart from the statement of Prosecution Witness No. 3 to secure the convictions of the accused, but the discovery having been made after the statement, affords strong corroboration of the statement, indicates that the name of the accused was not put into the mouth of this witness, and affords an additional reason for accepting her story as true.

14. I am of opinion that the evidence has been rightly appreciated by the assessors and the Sessions Judge and that the appellants have been properly convicted.

15. The convictions and sentences are confirmed.

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