

In Re: Karuppayya thevar

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Court : Chennai

Decided On : Sep-02-1941

Reported in : AIR1942Mad227; (1941)2MLJ999

Appellant : In Re: Karuppayya thevar

Judgement :

Horwill, J.

1. The learned Sessions Judge of East Tanjore charged the appellant with the murder of Visalakshi Ammal by striking her on the head with a heavy stick and causing an extensive fracture of the skull. He however found him guilty only under Section 304, para. 2, Indian Penal Code, and sentenced him to seven years rigorous imprisonment.

2. According to the prosecution evidence, there was a quarrel because P. W. 7 had stolen a chisel from Rangaswami Asari, a relative of the accused, when Rangaswami Asari failed to pay P.W. 7 his wages. On the 11th of September, P. W. 7 was beaten by the accused, and on the following day, that is, on the 12th, Murugayya and Rangaswami Asari went to P. W. 8's house and continued the quarrel. There was also a disturbance in the early evening of the 13th. The actual attack which resulted in the murder took place at about 8 P.M. ; and it arose because P. W. 4, a respectable man in the village, went to the persons who were quarrelling and attempted to pacify them. He was accompanied by his aged father

(P.W. 6) and his mother, the deceased. The accused, a young man of 22 or so, seems to have got incensed at the interference. Finding it easier to deal with a woman than with a man, he struck the deceased with his stick, fracturing her skull. He then ran after P.W. 8, another elderly woman; but she was fortunately able to escape into her house and secure the door.

3. The murder is spoken to by as many as six eye-witnesses. Although P. Ws. 4 and 6 are closely related to the deceased, there is no reason why their evidence should not be accepted. On the contrary, it seems most unlikely that P. Ws. 4 and 6, with whom the deceased went to pacify the accused, would foist this murder on the accused, with whom they had no quarrel whatsoever. The dispute was between P. Ws. 7 and 8 on the one hand and Rangaswami Asari and Murugayya on the other. P. Ws. 4 and 6 had no concern with the matter at all, except as elders asked to intervene. P. Ws. 9 and 10 are also trustworthy witnesses.

4. The learned advocate for the appellant has relied on certain discrepancies in the medical evidence, and has argued that--contrary to the prosecution story--the deceased probably received two blows; because she had one injury on the forehead to the left side of the middle line and also what is commonly known as a black eye on the other side. The young Lady Assistant Surgeon was quite sure that these were due to two distinct blows; but the two much older men doctors (P. Ws. 3 and 5) were of opinion that they might well have been caused by one blow; for one of the fractures radiating from a central depressed fracture extended to the right orbital cavity. This particular radial fracture might well have led to an extravasation of blood which would have made the skin appear blue. It was not however necessary for the Court to have tried to reconcile the various statements made by expert witnesses with regard to the nature of the blows which caused the injuries; it should have asked itself whether the medical evidence precluded the prosecution story. The prosecution witnesses stated that there was only one blow; and although the evidence of P.W. 2 may be said to be inconsistent with that, yet reading the medical evidence as a whole, it cannot be said to render the prosecution story unworthy of credit. .

5. The accused put forward a theory that the deceased fell on a survey stone, but there is no evidence at all that she did so. It is unworthy of consideration in the face of the evidence of so many eye-witnesses.

6. The learned Sessions Judge, instead of finding the accused guilty of murder, has found him guilty only under Section 304, para. 2, Indian Penal Code, holding that although the accused should have known that death was a likely result of such a blow, death was not the necessary consequence of it. He seeks support for that conclusion from the evidence of P. W. 5, one of the doctors examined. P. Ws. 2 and 3 say that death was the necessary consequence of the blow; but P.W. 5 says that it was not a necessary result but only likely. He appears to have used the word 'likely' in contradistinction to 'necessary.' A person can be guilty of murder even though death is not a necessary consequence of the blow given. Persons make remarkable recoveries at times from severe injuries that ordinarily lead to death. P. W. 5 does not explain how the deceased could have recovered from a depressed and extensively radiating fracture; but perhaps the piece of bone that was depressed could have been removed by operation. Ordinarily, however, an injury of the nature caused to the deceased ends fatally. Even P. W. 5 says that death might have resulted instantaneously from such an injury, and it is one's experience that injuries of this kind ordinarily end fatally. A person commits the offence of murder if the act he does is done with the intention of causing bodily injury to a person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. The blow given to the deceased must have been a very heavy one to have caused such a severe injury, and the accused must be presumed to have intended the probable consequence of such a blow. The injury so caused being sufficient in the ordinary course of nature to cause death, the accused committed the offence of murder and should have been convicted accordingly. The learned Public Prosecutor thinks that the learned Sessions Judge may have felt himself restrained by an apparent admission of the Public Prosecutor of East Tanjore that the offence committed was not that of murder. If the local Public Prosecutor made such a statement, he did wrongly. One expects a Public Prosecutor to be fair to an accused person and not to press for a conviction of a graver offence if he thinks a lesser has been committed. On the other hand, it is his duty to put before the Sessions Judge all that can be said in

support of the charge. To do the Public Prosecutor justice, however, I very much doubt whether the learned Sessions Judge felt himself restrained in any way by anything that the learned local Public Prosecutor said.

7. The conviction and sentence are affirmed and the appeal dismissed.

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