

In Re: Paramban Mammadu and ors.

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Court : Chennai

Decided On : Jan-19-1949

Reported in : AIR1951Mad737

Judge : Horwill and ;Rajagopalan, JJ.

Acts : [Evidence Act, 1872](#) - Sections 45 and 133; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367

Appeal No. : Referred Trial No. 83 and Cri. App. Nos. 445 to 448 of 1948

Appellant : In Re: Paramban Mammadu and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K.S. Jayarama Aiyar, ;B. Pocker, ;K.M. Seethi Sahib, P.A. Quadir Meeran, ;M.R.M. Abdul Karim and ;Mahboob Ali Khan, Advs.

Disposition : Appeals allowed

Judgement :

Horwill, J.

1. The four applts & three others who were acquitted by the lower Ct were charged by the Ses J. of South Malabar under Section 120B read with Section 302, I. P. C., of conspiring with P. W. 10 to commit the murder of one Ramasimhan. There was

also a charge under Section 148 of being armed with dangerous weapons & rioting. They were further charged under four separate counts for the murder of the said Ramasimhan, his brother Narasimhan, the wife of Narasimhan, & one Raju Iyer, a Brahmin cook of Ramasimhan. These four persons will be referred to during the course of the judgment as deceased Nos. 1 to 4 respectively. The learned Judge found accused 1 only guilty of conspiracy & the four appls guilty under Sections 147 & 34, read with Section 302, I. P. C. on all the four counts. He sentenced the four appls to death &, as already stated, acquitted the other three.

2. The motive for the offence is said to have been the enmity borne by the Moplah community in general & the seven accused & P. W. 10 in particular against Ramasimhan & his brother, deceased 2 because they had renounced Islam & allowed themselves to be converted to Hinduism. Narasimhan had subsequently been elevated to Nambudiri rank & had been accepted by the Nambudiri community as one of their number; & to him in marriage was, given the daughter of P. W. 26, a girl of 15 years of age, who was with her husband at the time of the murder & shared his fate. After deceased 1 had been converted from Islam to Hinduism, he diverted the large sums of money that he was accustomed to contribute to Muslim charities & spent them on Hindu charities. In particular, he renovated a Hindu temple in, the vicinity & was responsible for restoring regular worship there. He began a diligent, study of the Hindu scriptures & was studying the Bhagvad Gita, & had perpetually with him, P. W. 25, a Nambudir, to teach mantrams to deceased 2. He had moreover sent his two sons to Delhi to be instructed & brought up in the Hindu religion. All this, the prosecution say, gave rise to a great deal of enmity against him among Muslims & specific instances have been spoken to in the evidence in which Muslims were heard denouncing very severely deceased 1 & even threatening his life.

3. Ex. P. 60 gives an accurate idea of the bungalow of Ramasimhan, by name 'Malaramba Bungalow'. The main entrance to the bungalow was on the eastern side. To enter the house one has to pass through a door situate on the eastern side of a porch, which is the entrance to the bungalow. Just inside that door were lying deceased 1 & P. W. 24, a boy kept by deceased 1 to massage him. This witness was lying on a mat (M. O. 17), which, assumes some importance because

on it was found a foot-print; & P. W. 25 lay on another mat (M. O. 18) which is important for the same reason. From the verandah one can enter the room marked 'B' on the plan & from that central room one can pass to rooms north & south. Immediately to the north of that central room was a room in which was lying a child of P. W. 26, the mother of deceased 3. Still north of that room again on a cot were lying the deceased 2 & 3. To the south of the central room were lying P. W. 26 & two of her children. To the west of this series of rooms which run north to south is a verandah, from which is a passage way to the west leading into the dining hall & the kitchen. The western verandah of the main building was separated from this passage way by a door which was said to have been fastened on the night of the offence, as was the main entrance at the east. If those doors were secured, then, apparently, the house could only be entered by breaking open those doors. If one passed through the door separating the western verandah from the passage way, one passed first into the dining hall, where were sleeping deceased 4 & his assistant, P. W. 22. To the west of the main hall was a kitchen in which P. W. 22 subsequently took refuge.

4. According to the story of the persons who were in that bungalow on the night of the offence & who survived the murderous assault, the first inkling that any strangers were trying to enter came from a banging on the front door. P. W. 24 deposed that the door had not been securely fastened. Although there were three bolts, only the bolt on the top had been secured; & so when the door was knocked that bolt fell & the door opened, P. W. 24 does not give evidence of any great value; for as soon as he saw a person enter, he ran through into the middle room & there joined P. W. 26 & her children. P. W. 25, on hearing cries, hid behind an almirah situate close to where he was lying. From there he was able to see something of what was taking place. He deposed that a little after midnight (2 a.m. was that time generally agreed upon), he heard a sound of a battering of the front door. Before he hid behind the almirah, the first deceased came saying 'Who is it, Eda' & then crying out 'Boy, I am cheated', referring to deceased 2. He saw somebody cutting the first deceased with a weapon about a cubit long. He was able to see what was happening not only by the moonlight shining through the door, but by the light of a torch which was being shown by the assailant. Deceased 2 then came running & flashed a torch to see what was happening. He ran back

when he saw the assailant. The witness saw a person chasing deceased 2, but is unable to say whether or not that person was the same man who had attacked deceased 1. A little later, when things had become a little quieter, he made his escape. When deceased 4 & P. W. 22 heard the door separating the verandah of the main building from the passage being broken open, P. W. 22 ran into the kitchen before anyone entered there; but he saw a person attacking deceased 4. Subsequently, somebody flashed a torch into the kitchen; but as he was hiding behind the door, he was not seen. Deceased 4 though severely injured, was able to escape & give two statements Exs. P. 24 & P. 7, before he died. Ex. P. 24 is a statement recorded by a Head Constable. Later on, he was taken to the hospital, where the Sub Mag (P. W. 6) recorded the other statement, Ex. P. 7. The earlier statement was a simple one in which he said that at about 2-30 a.m. he saw somebody flashing a torch & heard him kicking at the door of the bungalow. The man kicked open the door, flashed the torch in his face, & immediately began to attack him. It would seem from this statement that only one person came into the dining room where he was sleeping; but he saw a number of persons running away after attacking deceased 2. Then somebody fired at him with a gun & wounded him in the hip. Ex. P. 7 is to the same effect & is clear that he saw only one person, & that that man incited another to shoot Mm. It is of importance that in Ex. P. 7 he stated that the man whom he saw was a Moplah. P. W. 18 sleeping in a Ford Car in a shed that had been erected against the southern wall of the bungalow, & when some persons ran there & set fire to the car, he escaped without identifying anybody. He said that he was able to make out from the accent of the assailants that they were Moplahs. There is other evidence that the persons who were attacking there were Mop-las; & we find no reason for thinking that the persons who made these statements were unable to say to what community the attackers belonged; for the dress & speech of the Moplahs are distinctive.

5. The offence was committed on 3-8-1947, & for a long time no clues were obtained. A person by the name of Haneefa was later arrested & identified by P. W. 25 as one of the assailants. On the day of his arrest (14-10-1947) was arrested also Kunhammad, a brother of deceased 1 & 2 who had been converted upon the persuasion of his brothers, but later reverted to Islam. Another person arrested at the same time was one Kutti Ali, the father-in-law of Kunhammad. In the meanwhile,

the police had been examining the bungalow very closely & a number of bloodstained footmarks were found in the bungalow on the mats M. Os. 17 & 18 & in the portico. One of these impressions was thought at one time by the Foot Print Expert (P. W. 33) to be that of the right foot of Haneefa. Soon after these persons were arrested & one of the foot prints identified to be that of Haneefa, a charge sheet was filed against these four persons 6 or 7 weeks later, on 2-12-1947, another charge sheet was filed, this time against 13 persons, including the four who had been charge-sheeted earlier, but not including any of the present accused or P. W. 10, the approver.

6. On 14-10-1947, a special investigating officer (P. W. 45) had been sent to investigate, & he had come to the conclusion that the murder had been committed out of religious fanaticism; & since he had found some hair adhering to a door frame with broken glass in the room in which P. W. 26 was sleeping with two of her children, he sent out constables to make a diligent search in all the neighbourhood for persons who had been injured. The first man with scars to be found was apparently accused 7, who was arrested on 14-12-1947. His arrest was followed on 17-12-1947 by the arrest of accused 6. Accused 5 was found with scars & arrested on 26-12-1947. On 28-12-1947, accused 2 & 4 were arrested, the latter having scars. P. W. 10 had been arrested on 24-12-1947 & gave a statement implicating himself & others on 30-12-1947, whereupon accused 1 & 3 were arrested almost immediately on 1-1-1948. Footprints of the arrested men were taken & examined & provisional charge-sheets filed; but it was not until 22-3-1948 that the final charge sheet was filed against these seven accused, & these accused alone.

7. No special reason has been given by the prosecution why these seven accused & the approver, p. W. 10, should have participated in this murder. It has not been shown that these eight persons bore any greater enmity towards deceased 1 than any other member of their community, except possibly the accused 4, who is the President of the Izzathai Islam Sangham, the principal objects of which are said to be to relieve needy Mussalmans & to send converted men to Ponnani for training. He is a leather merchant; but all the other accused seem to be men of humble status, though of independent means, with the exception of accused 7 a coolie.

Accused 1 to 3 are ryots. Accused 5 is a cart driver & accused 6 a tea shop keeper. With the exception of accused 4, these men do not occupy any position either in society or in the religious life Of the community that would make it likely that they would plot a murder of this kind.

8. The principal evidence against the accused is that of the approver, P. W. 10. One generally expects the evidence of an approver to be rich in detail & colour, consistent within itself & not having any important contradictions when compared with other statements made by him earlier. Such evidence carries conviction to the mind; so that a Ct feels that very little other evidence is necessary to satisfy it beyond all reasonable doubt that the approver's story is true. The evidence of the approver, in this case is not however of that kind. It is thin & bare & does not carry with it an air of conviction. After stating that he & other numbers of the Moplah community felt hatred towards the first deceased, he described very briefly the conspiracy, which he said took place on a Saturday about 14th or 15th of the month of Ramzan, about a week or so before the plot was executed. The plot was hatched quite by chance. At Konapparamukku, a place where people gather together in their leisure time to have a chat, the witness chanced to meet accused 4 & 5, & later accused 6, & discussed with them the enormity of the first deceased's lapse into heresy. At the actual conspiracy were also present accused 1 & 2. Then, after giving a very short account of the conspiracy, he went on to describe the events of the day of the murder, & said that at about 4 p.m. on that day (Saturday) he went to Kavattuparama & there met accused 6. They were joined some time later by accused 2 to 5 & 7. From there, with the exception of himself, these persons left in ones & twos apparently agreeing to meet at Abu Baker Haji's rubber estate at 10 p.m. or so. The witness waited behind until 7.30 p.m. for the accused 1, who had been observing the Ramzan fast & intended to set out only after he broke it. They then went to the place of assignation & assembled there at 10 p.m. They had with them some unlicensed guns &, as agreed amongst themselves, each one of them had a knife. They then proceeded to the Mala-paramba bungalow of deceased 1 & while the witness kept watch, the others went inside & compound over the southern wall. He then heard the sound of striking the door & human cries. About ten minutes later, all the seven accused returned. He fired a shot at somebody who was running away, presumably

deceased 4. They then went on towards a tank about four miles away & there washed off the blood on their persons & either there or in the neighbouring jungle threw away their weapons & blood stained clothes.

9. One thing that strikes one about this story apart from its bareness, is the open manner in which the accused & P. W. 10 met together on the day of offence prior to its commission. One would have expected that they would have adhered to their original plan of proceeding secretly to the place of assignation in Abu Bucker Haji's rubber estate & not being seen together before that. We find, however, according to the story of this witness that they met together as early as 4 p.m. & openly waited for one another until all but accused 1 had come. When one compares the evidence of P. W. 10 in the Sessions Ct with his confessional statement, one finds material discrepancies relating to the circumstances under which the murder was planned. Ex. D. 7 series are extracts from his statement made to the police. There he stated that they first planned the murder on a Monday about 2 1/2 weeks or so before the murder was committed. Then they, i.e., P. W. 10, & accused 2, 3, 5 & 6 decided to murder deceased 1 on the following Sunday. On that Sunday they received information that the deceased 1 was not in his bungalow; & so it was postponed to the following Friday. They then arranged that himself & accused 1 to 3 & 6 should meet at 10 p.m. that night & that accused 4 & 5 should join them after they had left the tope on their way to Malappuram. They however found that it was again impossible to execute their plan that night; & so the murder was postponed until the following day, with the slightly different arrangement that they should meet together at the Kottapadi maidan at 5 p.m. This seems to us a very different story from what was given by P. W. 10 in his evidence. One cannot say upon reading through the evidence of P. W. 10 that it is necessarily false; but failing as it does to carry conviction, we feel that very substantial corroboration of his story would be necessary before it would be possible to bring home the guilt of this offence to the appts beyond all reasonable doubt.

10. The learned Ses J. relied principally for the corroboration of P. W. 10's evidence on the evidence of P. W. 33, the foot print expert. In para 38 of his judgment, the learned Judge stated:

'So far as accused 1, 3 & 5 are concerned, their complicity is established, because their foot-prints were found at the scene. As regards accused 4, P. W. 16 proves that accused 4 was on his way to the scene along with P. W. 10 & accused 5. This is sufficient corroboration for P. W. 13's evidence, as it is manifest that accused 4 could not have had a destination different from his companions.'

That is to say, assuming the guilt of accused 1, 3 & 5 because their foot-prints were found in the bungalow, accused 4 must have been guilty, too, because he was associated with men whose foot-prints had been proved to be that of the murderers.

11. The opinion of a foot-print expert is not admissible as evidence. If the Ct is to make any use at all of foot-print impressions, it must be satisfied from a comparison of the various foot-prints that they are those of the persons whom the expert says they are. The value of evidence with regard to foot-prints is obviously very much less trustworthy than evidence with regard to finger prints. In a fairly good impression of a finger or even in an impression where only a portion of the finger is shown, there is a wealth of detail available to the expert & to the Ct for comparison. One sees in a finger-print number of ridges & sweat pores situated along them. In examining a finger-print, therefore, one not merely compares the general configuration of the finger & all the lines on it, but one is able to study such minute details as the bifurcations & Junctions of the ridges & the relative positions on those ridges of the sweat pores. With regard to footprints, on the other hand, it would seem from the evidence & from what we have been able to read from Dr. Hans Gross's book on Criminal Investigation that one can only compare with the general shape of foot-prints found with the shape of impressions taken from the feet of the person suspected. Even in this limited comparison, one has not the same certainty as one would have in comparing finger-prints; because foot impressions vary considerably according to the circumstances under which they are made. Foot-prints made when a person is walking slowly or fast, or running slowly or fast or jumping, all create differences, which are material. Moreover, a foot print taken after a person has walked a considerable distance, as was the case here when the murder was committed, is larger than a foot-print taken when a person has been at rest, as was the case when foot-prints were taken from the

various persons in the Sub Jail, including some of the accused & P. W. 10. At p. 497 of John Adam's translation of the above book, the learned author says:

'One may then say with Massen, & rightly, that the details of all the impressions of a bare foot are in each particular case so distinctive & so characteristic that it is always possible to differentiate them, one from another, & recognise again the same impression. This is wholly true only when the impressions in question have been produced under identical conditions.....

If then the last & the first impression thus produced be compared, one will see how difficult it is to find this famous characteristic resemblance.'

He then goes on to say that the difficulty increases if the foot is turned or moved. At p. 499 he points out the necessity for making a number of trials in order to ascertain the circumstances under which an impression was made. He says that it is therefore necessary to find each time (when conducting the experiment of taking a number of impressions without adding any fresh colouring matter) a foot-print resembling the original in the quantity of colouring substance, when alone impressions from the same foot might be expected to be similar. At p. 510, the learned author says:

'Another result flowing from these conclusions is that the deductions made are only relative; they can never be expressed by pre-cited data & have only comparative value. It is impossible to give measurements or fixed sizes; for the numerous factors--the size, the weight, & the other corporal singularities of the individual walking, his burden, his gait, & the variable nature of the soil differ in every case, & may be combined in so many diverse ways that it is absolutely impossible to give precise indications on this matter.'

After discussing the matter further the author says, 'If one has but one indistinct foot-print & no clue therefrom, another must be searched for'. The only other passage that need be set out is found at p. 532:

'Much prudence must here be exercised (in taking measurements) & nothing undertaken which shows no chance of success. On the one hand the foot itself

varies considerably, e.g., it is much smaller in cold weather or after a long rest than during hot weather or after a long march; on the other hand it is difficult to measure in as much as it is not a regular body & must be measured differently according to the parts dealt with.'

If we bear all these facts in mind, then we are far from satisfied that the prosecution has proved that the foot impressions seen by the police on M. Os. 17 & 18 & on the portico are the foot impressions of accused 1, 3 & 5. The process adopted by the expert for comparison was first of all to lift the impression by placing over it a glass plate. Through that glass plate he would see the impression & make its outline on the glass with dots. He would then place the plate so marked over a plain sheet of paper & mark the dots on the paper. Finally, he compared that with an impression made directly from the foot of the person suspected. (After discussing the evidence, their Lordships proceeded:)

12. The learned Public Prosecutor, finding that the evidence with regard to the foot-prints is far from conclusive, has relied on the fact that accused 4, 5 & 7 were found, when examined by various doctors, to have had scars on their persons which could have been the result of injuries sustained on the night of the offence. If there is evidence that an assailant has received any injury on some particular part of his person & a corresponding injury is found on the body of the suspected person shortly after the offence is committed, & there is medical evidence that that injury was probably caused at or about the time when the offence was committed, the evidence of the injury would be strong corroborative evidence against that person. But such evidence becomes increasingly weak as the time between the examination of the injuries or the scars & the date of offence increases. These accused were examined five or six months or more after the offence was committed; & so it was impossible for the doctors who gave evidence to say precisely that these injuries were caused on the day when the murder was committed or even within a short period before or after. They could not even be sure to within a month or so of the offence when the injuries were caused. Further, there is no evidence that any of the assailants met with injuries at the time when the murder was committed, except that when the police officers were examining the bungalow they found some hair adhering to some broken glass. That would

indicate that on the person of one of the assailants on a part of his body normally covered with hair, one could expect to find an injury. The learned Public Prosecutor has stated that since there was a lot of broken glass strewn about, some of the assailants might have cut their feet walking over it. That may be true; but it is a curious circumstance that while many scars were found on the bodies of these accused persons, none was found on the feet of any of the accused. Accused 7 had no less than nine scars on his person, accused 5 had three scars & accused 4 had one scar & a number of scratches. The learned Public Prosecutor has been unable to suggest how so many injuries could have been caused to these three persons on the night of the offence. We are therefore unable to attach any value to this evidence. (Their Lordships discussed the evidence & proceeded:)

13. It is seen from the above discussion that the evidence of the approver receives no corroboration of any importance from the evidence of any of the other witnesses & has therefore to be rejected, as not being sufficient to bring home the offences to the applts.

14. It is unfortunate that such a grave crime has not been detected; but the failure of the prosecution to prove the offence against the applts was not due to any defect in the investigation, which seems to have been most carefully--& certainly very honestly--conducted. No attempt was made to make evidence, where none was naturally, forthcoming, & if the police were unable to obtain more evidence it was because the Moplah community largely succeeded in maintaining secrecy. It was almost impossible without their co-operation for the police to obtain any more evidence relating to the crime.

15. The appeals are allowed & the convictions & sentences passed on the applts set aside. They are ordered to be set at liberty.

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