SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

In Re: Shanmuga Kone

In Re: Shanmuga Kone

SooperKanoon Citation : sooperkanoon.com/797604

Court : Chennai

Decided On : Dec-02-1941

Reported in : AIR1942Mad700; (1942)2MLJ240

Appellant : In Re: Shanmuga Kone

Judgement :

King, J.

1. The appellant has been convicted of the murder of his wife Valliammal by the learned Sessions Judge of Tinnevelly and has been sentenced to death.

2. The prosecution case is that the appellant recently married Valliammal as his second wife and that there were misunderstandings between them because he had not taken back property which he had delivered to his first wife in order to make over some of it to Valliammal. There is, however, no evidence of any actual quarrel preceding the offence Valliammal was killed on the afternoon of the 10th March, 1941. She was then out in a cholam field near a well. At the well P.W. 5 was baling water. In the field next to that of the deceased, according to the evidence given by her in the Committing Magistrate's Court, was a young girl P.W. 4. There is no direct evidence of the offence. Evidence is given by P.W. 5 which proves the presence of the, appellant near where the deceased's body was found and P.W. 4's evidence before the Committing Magistrate was that she saw the appellant running away immediately after she had heard cries from the deceased

and that the appellant's clothes were stained with blood. In her evidence before the Sessions Judge P.W. 4, however, denied that she was anywhere near the spot on the afternoon of the 10th March, and she said that she had been induced by one Vedikara Kone and others whose names she did not remember to give evidence before the Magistrate. The learned Judge believing that the witness was not giving true evidence before him admitted her evidence before the Committing Magistrate under the provisions of Section 288 of the Criminal Procedure Code.

3. The appellant denied having committed the offence and denied the whole story of the misunderstandings between himself and Valliammal. He said indeed that he had never been married to her and that in all probability Valliammal's former husband Kottiappa Kone must have killed her. The question of the relationship between the appellant and Valliammal has not been seriously pressed before us. It was contended at the trial that in the caste to which the parties belong divorce and re-marriage are not permitted and therefore it would have been - impossible for the appellant to have married Valliammal. It has, however, been pointed out by the learned Sessions Judge that when questions were put to him by the Committing Magistrate to the effect that witnesses gave evidence that he had killed his wife, the appellant in replying did not deny that she was his wife and it has been further pointed out that even in the evidence of the defence witnesses who were examined to speak to this point only, instances were not scarce of re-marriages being permitted in the caste.

4. It was argued for the appellant that the learned Sessions Judge ought not to have admitted the evidence of P.W. 4 before the Committing Magistrate. The learned advocate even went so far as to say that such evidence was essentially inadmissible on the ground that the Judge had not conducted an inquiry to satisfy himself beforehand that the evidence given by P.W. 4 before him was false and the evidence given before the Committing Magistrate was therefore likely to be true. Our attention was called to two rulings from Calcutta, Bajrangi Lall v. The Empress 4 C.W.N. 49 and King-Emperor v. Bhut Nath Ghose 7 C.W.N. 345 in support of this argument that the evidence of P.W. 4, before the Committing Magistrate was without some such preliminary inquiry inadmissible. We do not find, however, the learned Judges of the Calcutta High Court laying down any

such proposition. In these rulings all that they have indicated is that they did not agree with the view of the trying Court and that the trying Court ought to have realised that the evidence of the witnesses in question before the Committing Magistrate was not. in fact true. Quite clearly there can be no legal objection to the Sessions Judge in this instance taking action under Section 288. It is quite clear that the Sessions Judge had | made up his mind that the witness was not giving true evidence before him.

5. As to the question whether the evidence before the Committing Magistrate was in fact true, we think the learned Sessions Judge was justified in accepting it. It has been further confirmed by the statement taken by the Taluk First Class Magistrate of Sankarankoil under Section 164 of the Criminal Procedure Code six days after the offence occurred and we find P.W. 5 in her evidence in the Sessions Court referring to the presence of P.W. 4 which P.W. 4 denied before the Sessions Judge and to P.W. 4's informing her that the appellant had been seen by her running away with blood-stained clothes. Finally, there is a clear reference in the report which P.W. 5 made to the Village Magistrate within a couple of hours or so of the occurrence that she had seen P.W. 4, that she had heard her crying out and that P.W. 4, had told her that it must have been the appellant who had committed the offence. In these circumstances we think that the evidence which P.W. 4, gave before the Committing Magistrate and which was admitted by the learned Sessions Judge under Section 288 can safely be relied upon. That evidence corroborated as it is by P.W. 5 to some extent and by the report to the Village Magistrate is we think sufficient to bring the offence home to the appellant. There are no extenuating circumstances in this case and we confirm both the conviction and the sentence and dismiss the appellant's appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com