

Thoppa Vs. Emperor

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Court : Chennai

Decided On : May-09-1935

Reported in : AIR1936Mad82

Appellant : Thoppa

Respondent : Emperor

Judgement :

1. The appellant has been convicted under Section 302, I.P.C. of the murder of Muthu Vannan, a washerman, by stabbing him with a spear and sentenced to death subject to confirmation by this Court. He has also been convicted under Section 326, I.P.C. of causing grievous hurt with a deadly weapon to Veerammal, the wife of Muthu Vannan, and sentenced to rigorous, imprisonment for three years. Vellathayi, the daughter of the deceased, was divorced by her husband, and it was settled to marry her to P.W. 3, the husband of Chinnammal, the mistress of the appellant. P.W. 3 would not drop the idea in spite of the requests of the appellant at the instance of his mistress, and the appellant and his friend, Vannimuthu, tried to prevent the marriage by insulting and intimidating: Vellathayi. They were not successful and the marriage was fixed for 17th October 1934. The deceased and Veerammal were as usual sleeping on the pial of their house, with their bundle of soiled clothes on the night of 15th October, and the prosecution case is that about 2 a.m. on 16th October while the deceased was passing water, Vannimuthu arrived and lifted the bundle of soiled clothes from the pial. The deceased followed and seized him raising an alarm, and struggle ensued.

Veerammal rushed to the spot on hearing the alarm and the deceased was holding Vannimuthu by his legs. She caught him by his waist and the appellant who was close by stabbed the deceased with a spear 5 or 6 times. He stabbed Veerammal next and they let go their hold. The two ran away and the neighbours gathered. The injuries of the deceased were serious and two of them were ordinarily fatal. He died in hospital on the 20th and the hurt caused to Veerammal was grievous.

2. The appellant pleaded an alibi and cited witnesses to prove that he was absent at an election meeting. He was defended by a pleader engaged by him, and when after being examined, he was asked whether he wished to examine any witnesses, he stated that he did not. The case was then summed up by the prosecutor and the defence pleader, and the appellant was convicted. There is no substance in the contention that the trial is vitiated by non-compliance with Clause i, Section 289, Criminal P.C. which provides that the Court shall call on the accused to enter on his defence if after the prosecutor sums up the case it considers that there is evidence that he committed the offence, and, as pointed out in, *Bechu Lal v. Injured Lady* 1927 28 Cri. LJ 297 what that clause means is that if the accused calls no witnesses, he or his pleader is to make his final address to the Court. Even otherwise the omission to call upon the accused to enter on his defence is a mere irregularity covered by Section 537, Criminal P.C. vide., *Premgir v. Emperor* 1918 16 All LJ 41, and the case against the appellant is clear. That the deceased and Veeram. mal were stabbed on the road near their house about 2 a. m. on 16th October 1934 was not disputed and Veerammal speaks to what transpired after she rushed to the spot. The appellant and Vannimuthu were known to her previously and P.Ws. 8 to 12, the neighbours, were informed about it on their arrival though they were told generally that the appellant and Vannimuthu stabbed them. Two union lamps were burning in the locality and P.Ws. 8 and 9 swear that they recognised the appellant and Vannimuthu while they were running away. The occurrence was reported to P.W. 18, the Sub-Inspector, soon after, and the deceased told him that the appellant was the assailant.

3. The deceased was then removed to the hospital and Ex. L, the statement recorded by the Sub-Inspector after the injuries were attended to, sets out the

particulars of the occurrence. Ex. D, the dying declaration recorded by the Sub-Magistrate some time later, is to the same effect and the evidence does not disclose any motive for the deceased to implicate the appellant falsely. It cannot therefore be doubted that the appellant was the assailant and he would unquestionably be guilty of causing grievous hurt with a deadly weapon to Veerammal. Two of the injuries of the deceased were fatal and the offence is clearly murder. The conviction is therefore right and though the appellant might not have originally intended to murder the deceased and the stabbing was to free Vannimuthu from the hands of the deceased and Veerammal, the assault was brutal and the sentence does not call for interference. The convictions and sentences are therefore confirmed and the appeal is dismissed.

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