

Kuppan Vs. Emperor

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Court : Chennai

Decided On : Mar-24-1909

Reported in : 1Ind.Cas.547

Judge : Benson and ;Miller, JJ.

Appellant : Kuppan

Respondent : Emperor

Judgement :

1. There is no evidence against the appellant (2nd accused) except the evidence of the 3rd and 4th Prosecution witnesses and the confession of the 1st accused implicating the 2nd accused, which confession was afterwards retracted. It seems to us clear that the evidence of the 3rd and 4th Prosecution witnesses cannot be regarded as trustworthy in view of the fact that the village Munsiff's Court makes no reference to the seizure of the 2nd accused by those witnesses (as now alleged by them). On the contrary it says that the 3rd and 4th witnesses, pursued the other thief but were unable to catch him. The Sessions Judge should have instructed the jury that if they did not believe the evidence of the 3rd and 4th witnesses the implication of the 2nd accused by the confession of the 1st accused would not be sufficient to justify a conviction. This was clearly ruled by this Court in Criminal Appeal No. 806 of 1908 where, after referring to Section 30 of the Indian Evidence Act, the Court held that the wording of the section shows that such a confession is merely to be an element in the consideration of all the facts of the

case, but does not do away with the necessity for other evidence. The statement of a co-accused is of less probative force than the evidence of an accomplice, for it is affected by all the inherent weakness of such evidence and it cannot be tested, as such evidence can by cross-examination, nor is it given under the sanction of an oath. It is a general rule of practice that it is not safe to convict upon the uncorroborated evidence of an accomplice, and the confession of a co-accused is on an even lower footing. A conviction on such a confession alone has long been held to be a case of 'no evidence and bad in law.' Madras High Court Proceedings, 24th March 1873 7 M.H.C.R. 25; Reg. v. Ambigara Hulagu 1 M.k 163; The Empress v. Ashootosh Chuckerbutty 4 C.k 483. The Sessions Judge should have directed the jury accordingly and told them to acquit the 4th accused.'

2. The omission of the Sessions Judge in the present case to give an instruction to the jury in the sense above stated was, in our opinion, a clear misdirection and we think that it has also in fact led to a failure of justice, for the evidence of the 3rd and 4th Prosecution witnesses is not, in our opinion, trustworthy. We must, therefore, set aside the conviction and acquit the appellant, Kuppan, and direct his release as far as this charge is concerned.

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