

In Re: Periyaswami thevan

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SooperKanoon Citation : sooperkanoon.com/801807

Court : Chennai

Decided On : Mar-01-1950

Reported in : AIR1950Mad714

Judge : Govinda Menon ; and Krishnaswami Nayudu, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300; [Evidence Act, 1872](#) - Sections 3 and 27

Appeal No. : Referred Trial No. 135 of 1949 and Cri. App. No. 44 of 1950

Appellant : In Re: Periyaswami thevan

Advocate for Def. : Government Prosecutor for Public Prosecutor

Advocate for Pet/Ap. : S. Krishnamurthy, Adv.

Disposition : Appeal allowed

Judgement :

Govinda Menon, J.

1. The adequacy or otherwise of the circumstantial evidence against the accused will have to determine his guilt or innocence and for that purpose it is necessary to outline briefly the evidence against him. Shortly put, and if we accept the prosecution evidence in its entirety, the evidence comes to this : Firstly, that the

deceased and the appellant were on inimical terms sometime prior to the date on which the murder took place, Secondly that the accused had threatened the deceased that he would cut him even as the deceased had cut and tilled his goat. Thirdly, on the date of murder, a few hours prior to its taking place, there is evidence that the deceased was seen driving his goats in a particular direction The accused also was doing the same thing so far as his own goats were concerned, i.e., both the deceased and the accused were seen either in each other's company or in close proximity to each other some hours before the murder took place. The further piece of circumstantial evidence is that sometime after the alleged murder, the accused was seen with a blood-stained chopper going in a direction opposite to the place of murder but coming from the place of murder; and lastly, on information given by the accused, a blood-stained chopper M. O. 1 was recovered from a bush about 21/2 furlongs to the east of the scene of murder. The question we have to decide is whether these pieces of circumstantial evidence are sufficient to bring home the guilt to the accused beyond, reasonable doubt.

2. It is argued by the learned counsel for the appellant that the evidence of P. W. 10 who speaks to the fact of having seen the accused proceeding in an opposite direction from the place of murder with a blood-stained aruval in his possession at about noon on 4th august 1949 cannot be accepted. We have been taken through the evidence of P. W. 10 and we have heard the comments of the learned counsel on that point. It seems to us that to a certain extent the criticisms levelled against the testimony of P. W. 10 can be justified. But we do not for the purpose of the decision of this case say that P. W. 10 is speaking to things which he did not see or to occurrences which he did not witness. Granting that his evidence is acceptable, in conjunction with the circumstances adverted to by us above, would it be sufficient to show that the accused was the murderer? There is also another criticism regarding item 1 of circumstantial evidence viz., the association or seeing together of the deceased and the accused before the incident. Even on that the learned counsel contends that the evidence of P. W.s 7, 8 and 9 cannot be accepted because they are neither positive nor definite that the deceased and the accused were actually moving together. It might be, as argued by the learned counsel, that each one of them was driving his goat separately probably in the same direction; but there is no coincidence of time so far as the driving is

concerned. This is also a justifiable criticism. But we do not want to say that these witnesses are not speaking the truth.

3. Taking the prosecution case at its face value, it seems to us that the offence cannot be held to have been brought home beyond reasonable doubt to the accused. If the prosecution had shown that the blood-stains on M. O. 1 belong to the same group as the blood of the deceased, the answer would have been clinching. But there is no such evidence in this case. Nor is there any evidence that any article belonging to the deceased was found- either in the possession of the accused or recovered as a result of information given by the accused. Ordinarily in a case of circumstantial evidence where there has been a discovery as a result of a confession made under Section 27, Evidence Act, we expect to find the discovery of something which can be associated with the deceased and not with the accused. The question of the weapon with which the offence was committed being discovered as a result of information given by the accused is also probable. But in such a case the mere fact that a weapon, which could have been used for the commission of a crime like this, was discovered with blood-stains on it on information given by the accused, would not, by itself, be sufficient to show that he was the murderer. But whatever that might be, the only important circumstance in the case, viz., that the bloodstained weapon with which the murder could have been committed was unearthed as a result of information given by the accused, would not by itself be sufficient to bring home the guilt to the appellant. In such circumstances we feel that though the case is one of very grave suspicion against the accused and though we might have something like a moral conviction that the accused must have committed the crime, still there is not sufficient legal evidence on which a Court can found a conclusion that the appellant must have been the murderer. In such circumstances the benefit of the doubt has necessarily to be given to the appellant.

4. The appeal is allowed; the conviction and sentence are set aside and the accused is acquitted.