

Ramasami Boyan Vs. Emperor

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Court : Chennai

Decided On : Oct-14-1919

Reported in : 54Ind.Cas.479

Judge : Seshagiri Aiyar and ;Moore, JJ.

Appellant : Ramasami Boyan

Respondent : Emperor

Judgement :

1. We are unable to uphold the conviction in this case. The murder is said to have been committed on the 3rd February 1919. The learned Sessions Judge, who has written a very clear judgment, relies mainly on four circumstances as incriminating the 1st accused. He first of all refers to the fact that certain ear-rings were recovered in consequence of the information given by the 1st accused. In order to bring that information within Section 27 of the Indian Evidence Act, the information must have had the direct effect of leading to the recovery of the jewels. As was pointed out in Queen Empress v. Commer Sahib 12 M.P 153 : 2 Weir 738 if the information is only introductory to further investigation, it will not be evidence under Section 27. Assuming that the prosecution evidence is accepted in its entirety, what happened is that the 1st accused, on being questioned, informed the Police Officer that the earrings were in the possession of the 2nd accused. Thereupon the 2nd accused was questioned and he produced the ear-rings from his box. In our opinion the information given by the 1st accused was not the direct cause of

the production of the ear-rings and consequently it does not come within Section 27 of the Evidence Act. Moreover, as pointed out by Mr. Govindaraghava Aiyar, the evidence in regard to this matter is inconclusive. The Police Inspector says in one place that the 1st accused gave information about the 2nd accused having the ear rings. In another place he says that the 1st accused refused to give information and, therefore, recourse was had to questioning the 2nd accused. The other witnesses who speak to this matter, namely, P.Ws. Nos. 2, 3 and 4, do not support the Police Inspector as regards the 1st accused having given the information. Therefore, we are not prepared to accept the evidence of the Police Inspector on this part of the case. We are unable to agree with the Sessions Judge that the statement of 1st accused was admissible under Section 27 as it led to the discovery of the jewel. Therefore, we must put aside this evidence.

2. The second Circumstance referred to by the learned Sessions Judge is that there was enmity between the 1st accused and the deceased on account of the woman Sita (P.W. No. 12). The learned Judge has overlooked the fact that among Wadders divorce is common and by the removal of the thali, the man and the woman became entitled to re-marriage. Such being the case we are not prepared to attach much weight to this circumstance, although we agree with the learned Judge in thinking that there probably was ill-feeling between the accused and the deceased.

3. The third circumstance mentioned by the learned Judge is the ownership of the spade (Material Object No. 2). The Judge points out that it was produced by the 2nd accused that it is an ordinary kind of spade, and beyond the evidence of P.W. No. 12 there is nothing to show that it belonged to the deceased. The last and the most important circumstance on which the learned Judge relies is the confession, Exhibit L, made to the Committing Magistrate. This confession was retracted in the Sessions Court. The law in regard to the relevancy and materiality of a retracted confession has been well established in this Court. In *Queen-Empress v. Rangi* 10 M.P 295 : 2 Weir 361; Kernan, J. points out the qualifications under which a retracted confession can be admitted in evidence. Undoubtedly since then the invariable rule in this Court has been that unless a confession is corroborated in material particulars and by independent testimony, it should not be the basis of a

conviction. Queen-Empress v. Bharmappa 12 M.K 123 : 2 Weir 376 and Queen-Empress v. Raru Nair 19 M.K 482 : 2 Weir 745 accepted this principle. In other High Courts the same view has been taken vide Emperor v. Lalit Mohan Chakravarti 8 Ind. Cas. 1059 : 38 C.K 559 : 15 C.W.N. 98 : 12 Cri. L.J. 2 and Emperor v. Kehri 29 A.P 434 : 4 A.L.J. 310 : A.W.N. (1907) 140 : 5 Cri. L.J. .360.

4. The learned public Prosecutor contended that there is corroboration in material particulars, in regard to the confession. The circumstances to which he has referred us only touch, so to say, the fringe of the confession and not the important matter in respect of which it was made. The fact that Sita was being kept by the deceased is not a matter which would corroborate the confession : nor is the production of the ear-rings any corroboration because the confession itself was made long after. What is almost destructive of the confessional statement is the fact that P.W. No. 12, Sita, at no time admitted that she and the deceased were seen together and that her husband inflicted the injuries which ultimately resulted in the death of Hanuman. Even before the Sessions Judge she did not say anything about their meeting and their being discovered by her husband. If there was any truth in the confession of P.W. No. 12 who bore no good will towards her husband, she would have complained at once to the Village Munsif and to the father of the deceased. In these circum-stances we are unable to place any reliance upon the confessional statement which was retracted in the Sessions Court and of the truth of which there is really no corroboration. For these reasons we are unable to uphold the conviction. We set it aside and direct the prisoner to be set at liberty.