

In Re: Uppara Dodda Narasa

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SooperKanoon Citation : sooperkanoon.com/802520

Court : Chennai

Decided On : Sep-05-1938

Reported in : AIR1939Mad59; (1938)2MLJ771

Appellant : In Re: Uppara Dodda Narasa

Judgement :

Burn, J.

1. The appellant has been convicted of murder by the learned Sessions Judge of Bellary and has been sentenced to death. He has also been convicted of wilfully preferring a false complaint (Section. 211 of the Indian Penal Code) and for that offence he has been sentenced to seven years' rigorous imprisonment.

2. This is the first time in our experience that a person has been tried atone trial for offences under Sections 302 and 211 of the Indian Penal Code. The prosecution theory was that on the night of the 8th December, 1937, the appellant killed one Chaji Eranna, a farm labourer with the intention of foisting a false case of murder upon his enemies P.W. 11 and others. The appellant preferred the complaint Ex. A to the Village Munsiff at about 8-30P.M. on the 8th December, 1937, in which he mentioned the names of P.W. 11 and nine others. He alleged that these persons armed with a battle-axe and stout sticks had come and attacked himself and his younger brother and Eranna while they were in the thrashing floor watching the ground-nut crop. He alleged that one Tippanna (son of P.W. 11) had cut the

deceased Eranna twice with the battle-axe. It is therefore correct to say that the appellant preferred a charge of murder against P.W. 11 and his son and others. Now if the appellant himself had killed Chaji Eranna in order to foist a false case of murder upon his enemies and immediately after committing murder went to prefer a false complaint, it cannot be said that strictly speaking a joint trial held for the two offences under Sections 302 and 211 was illegal. It can be fairly contended that the two acts were connected together and formed part of the same transaction. But it is, we should think, quite obvious that offences of this nature ought not to be tried together. It is laid down in Rule. 156 of the Criminal Rules of Practice that it is inconvenient for Sessions Judges to try such offences as murder and theft at the same trial. This is no doubt due partly to the fact that the offence of murder is triable with the aid of assessors while the offence of theft is triable by a Jury. But the same principle applies with equal if not greater force to such cases as the present. It is obviously very embarrassing to the accused to have to answer a charge of murder at the same time as a charge of wilfully preferring a false complaint of murder. It is also embarrassing to the prosecution and may lead, as we fear it has led in this case, to failure of justice. In the present case attention in the Sessions Judge's Court has been focussed entirely upon the case of murder. It is of course obvious, that if this appellant murdered Eranna, his complaint against P.W. 11 and nine others for the same offence must have been false to his own knowledge and must have been preferred with intent to cause injury to them. That is probably the reason why the prosecution in the present case has let in practically no independent evidence with regard to the offence under Section 211. The only evidence that has been let in relates to the charge of murder and even that is of the most meagre kind-There is no evidence of eye-witnesses and the sole evidence upon which the appellant has been convicted is connected with the information which he is said to have given to the police leading to the recovery of the blood-stained head of a battle-axe (M.O.1).

3. The evidence relating to the statement of the accused is given by the Inspector of Police P.W. 7, the Village Munsiff P.W. 1, and a ryot of the village P.W. 2. We do not find any ground for discrediting the evidence of any of these witnesses but we hold that the evidence which they have given is inadmissible. It is clear from the statements made by these three witnesses and from the Attakshi Ex. C which

was written by P.W. 2 on the 11th December that the statements made in the presence of these three witnesses on that day were not statements leading to the discovery of the axe-head (M.O. 1). We are told that the Inspector got information about the case on the 9th December when he was at Bellary. He reached the village on the evening of the 10th December. He questioned the accused (to him at that time the complainant), and inspected the scene. He then found reasons for suspecting the accused and therefore he sent for the accused and his brother Chinna Narasa to the girl's school in Halvi village. The accused and his brother, he says, came about 4-45 P.M. He questioned both of them and arrested them, both at 5 P.M. He says the adtused admitted that his original complaint was false. It was after this that the Inspector sent for the Village Munsiff, P.W. 2 and the karnam as Panchayatdars and further examined the accused in their presence. Now it is quite clear from this and from internal evidence in Ex. C that the accused, or his brother, or perhaps both, had given to the Inspector all the information in their possession before the Village Munsiff and the other panchayatdars were called in. Ex.C begins with these words:

The Circle Inspector of Police, Adoni, having in the usual course come to know that Dodda Narasa, son of Uppara Eranna of Halvi village is the culprit in this case....

4. This shows that the Inspector already knew all about the confession of the appellant before Ex. C was recorded or before the witnesses were invited to listen to the answers which the accused would give to the questions put to him by the Circle Inspector. In these circumstances we hold, as we have held before, that the statements made by the accused in the presence of P.Ws. 1, 2 and 7 are not statements leading to the discovery of any relevant fact. The Inspector has said nothing about the information which was undoubtedly given to him by the appellant (or perhaps his brother) in the girl's school before P.Ws. 1 and 2 were called in. The evidence for the prosecution therefore simply amounts to this, that the appellant took the police officer to the house of his uncle C. W. 1 and there produced the blood-stained head of the battle-axe (M.O. 1). By itself it is quite insufficient to warrant the conviction of the appellant for murder. There is a curious omission in this case on the part of the prosecution to explain why Chinna Narasa,

the brother of the appellant was arrested and kept in remand, as the Sub-Inspector D.W. 7 says he was for 15 days, or, on the other hand, if there was just cause for keeping him in remand for 15 days, why his name was not included in the charge sheet.

5. The evidence being thus defective, the conviction for murder must be set aside and the appellant acquitted. We have to consider whether a retrial for the offence under Section 211 should be ordered since there certainly was a prima facie case against the appellant for that offence. But we have decided that no further trial should be ordered since it is quite clear that it could only be ordered to enable the prosecution to adduce evidence relating to the charge under Section 211 which ought to have been adduced at the trial. As we have already said, there is no independent evidence establishing the offence under Section 211. So far as the trial before the learned Sessions Judge is concerned, if the conviction for murder is set aside, the conviction for the offence under Section 211 must follow automatically. The appellant's appeal is therefore allowed. He is acquitted of both offences under Sections 302 and 211 of the Indian Penal Code. He is ordered to be set at liberty forthwith.