

Rangappa Goundan Vs. Emperor

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Court : Chennai

Decided On : Dec-03-1935

Reported in : AIR1936Mad426

Appellant : Rangappa Goundan

Respondent : Emperor

Judgement :

Cornish, J.

1. The two appellants have been convicted of the murder of one Sinne Goundan on the 4th March last, and have been sentenced to death. The case for the Crown is that the man was murdered by the appellants near a hut in some cotton fields where the three had gone that night to watch their crops. All three men were cultivators. It is common ground that the two appellants called for the deceased at his house that evening, about 9 o'clock, to accompany them to the fields, and that he went away with them. In consequence of information given to the police by the two appellants at 5 o'clock next morning, a constable arrived upon the scene and found the dead body of Sinne Goundan, lying in the cotton field, about 50 or 60 feet away from the hut. It was also seen there by the Village Munsif, P.W. 9, who arrived later. But an extraordinary thing happened at the trial. We are told that the medical witness, who had made a deposition before the committing Magistrate, was present in Court. But the Public Prosecutor asking the defence advocate if he

wished to examine this witness, and the defence advocate answering in the negative, the witness was not called. The result was that no evidence was given at the trial with regard to the injuries received by Sinne Goundan, or to the cause of death, or whether the injuries received by him were responsible for death. Section 509, Criminal P.C. is not intended to be applied where the medical witness is present in Court; and it does not even appear that his deposition in the Magistrate's Court was given in evidence. It is an elementary rule, that except by a plea of guilty, admissions dispensing with proof, as distinguished from admissions which are evidential, are not permitted in a criminal trial. (See Phipson on Evidence, p. 19). Therefore no consent or admission by the prisoner's advocate to dispense with the medical witness could relieve the prosecution of proving by evidence the nature of the injuries received by the deceased and that the injuries were the cause of death. The consequence was that an essential element of proof of the crime alleged against the two accused was wanting, and the conviction which has taken place in the absence of this evidence cannot stand.

2. The learned Sessions Judge referred to the autopsy made upon the body as establishing beyond doubt that the man was murdered. But a post mortem report proves nothing. It is not even evidence, and can only be used by the witness who conducted the post mortem inquiry as an aid to memory. These propositions have already been stated in *Queen-Empress v. Jadub Das* (1900) 27 Cal 295, The question is whether a retrial should be ordered or whether, acting under Section 428, Criminal P.C. we should direct the medical witness' evidence to be taken. The second course would obviously be the preferable one. But as we have come to the conclusion that the other evidence in the case is so unsatisfactory that it leaves Considerable doubt of the guilt of the two accused, there is no necessity, to call for the medical evidence to be taken. As already stated, at 9 o'clock that night the two accused called for the deceased man at his house. This is proved by the widow, P.W. 2, who says that the two accused had sticks, and accused 1 a carpet and accused 2 a sheet. Her husband took with him a spear-like weapon (M.O. 4) which had been specially made for him. P.W. 9, to whom the hut belonged, says that the three men used to sleep in the shed when the cotton required watching. There was no significance therefore in the two accused calling for Sinne Goundan on that night for that purpose. The next stage in the prosecution case is the evidence

of P. W 3. This man says that about midnight the two accused came to his house in the village, which is about 2 furlongs from the hut. Their coming set the dogs barking and aroused the witness. He says that the accused told him that they had killed Sinne Goundan, and asked him to help them. The witness awoke his brother, who suggested that they should go and report the matter to P.W. 4, a Village Munsif but not the Village Munsif of that village who is P.W. 9 and the leader of the rival faction to that of which P.W. 4 was the leader. And it is to be observed that Sinne Goundan was a tenant and a partisan of P.W. 9.

3. Then taking with them two farm servants, this party of six set out to find P.W. 4. Not finding him in the house where they expected him, they went off to the village of Karunaipalliem, 2 1/2 miles distant, to his father-in-law's house. But not finding P.W. 4 there, the party separated, P.W. 3, his brother, and the two servants returning home. The learned Sessions Judge has described P.W. 3 as an accomplice. We think that there is no foundation for that description in the evidence; but his story strikes us as highly improbable.. In the first place, no reason has been shown why the two accused should have killed Sinne Goundan. P.W. 8, who is the son of P.W. 9, the faction leader, says there was no ill-feeling between the accused and the deceased; and P.W. 4 states that the accused do not belong to either faction. And assuming that they did kill the man, no reason is apparent why they should have selected P.W. 3 as a confidant of their crime, or why, having chosen to confide in P.W. 3, they should have refused to tell him why they had killed Sinne Goundan. But P.W. 3 says that when he asked the accused they made no reply, which was strange conduct on their part seeing that they had come to seek P W. 3's help to get them out of their scrape. On the other hand it is incomprehensible why P.W. 3 should invent a false story against the two accused. The weak points in P. W 3's story suffer from the further infirmity of not being supported by his brother and the two servants who, he says, accompanied him on this expedition. Apparently the Public Prosecutor shared the opinion of the learned Sessions Judge upon P.W. 3, and thought that these companions of P.W., 3 were not worth calling. We think that P.W. 3's story is most improbable, and we do not believe it.

4. Now undoubtedly there is a strong case of suspicion against the accused. They were the persons in whose company the deceased was last seen alive, and he met his death that night near the shed which the accused and the deceased admittedly occupied that night.. The suggestion is that the First Information Report (Ex. E) which they made early next morning to the police was for the purpose of screening themselves at the expense of others. In this statement they say that while they were sleeping in the hut they were aroused by the deceased's cries, and saw the deceased on the threshing floor outside the shed being beaten by P.Ws. 5, 6, 7 and another named person. The report further says that when they raised an alarm they were threatened by the assailants, so they waited until the assailants made off and then went to the injured man and gave him a drink of water. The learned Sessions Judge regarded this statement as 'obviously false' which means, we suppose, that it is demonstrably untrue. It has been argued that owing to the darkness of the night the accused could not have seen who the assailants were on the threshing floor outside. But the hut, according to P.W. 9, has no door, and the accused say that they were threatened, which at least gave them the opportunity of identifying the assailants by voice. The learned Sessions Judge thought that the absence of any signs of a struggle within the hut belied the accused's statement; but Ex. E does not state that the was inside the hut. Again the learned Sessions Judge was of opinion that the accused's explanation of the blood-stains on their cloths was incredible; but we think it is not beyond the bounds of possibility that if they, as they said, attended to the injured man after the assault that they should have got blood on their cloths.

5. Then the Sessions Judge thinks that the failure of the accused to go to the village and give the alarm was not normal conduct. It is difficult to prescribe the normal conduct on such an occasion; but the accused account for their inactivity by their apprehension that the assailants would carry their threats into action, which is at least a plausible reason for the accused keeping quiet. We do not for one moment accept the contents of Ex. E as true. But we think that they have not been shown to be so obviously untrue as to raise the presumption that the accused had sought to foist their guilt on to others by means of a false charge. There remains the evidence of the disclosure of the bloodstained articles-the splinter from the hut by accused 1, and the carpet, sheet, stick and spear (M.O. 1

to 4) by the two accused from the garden of P.W. 4's father-in-law at Karunanipalliem. The accused deny that they disclosed these things. But we see no reason to disbelieve the evidence of the Police Inspector and P.W. 14 on this matter. The stick, and the spear, which was the deceased man's weapon, had been concealed in manure heaps. This is the strongest piece of evidence in the case against the accused. Unfortunately, there is no evidence of the statement made by the accused which led to the discovery of these things. All that the Inspector says is, 'at 7 p. m. after both accused had made a statement to me they took me to Karunaipalayam.' Anything said by the accused to the Police Officer which led to the discovery of these things would have been admissible and might have been of the greatest importance. But we have not got it. We think that the discovery of these articles of the accused raises a grave suspicion against the accused. But suspicion will not justify a conviction, and as we have already indicated, the other evidence in the case is not, in our judgment, sufficient to support the conviction. We accordingly allow the appeals, set aside the conviction and direct that the appellants be set at liberty.