

In Re: Balija Pullayya

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SooperKanoon Citation : sooperkanoon.com/806423

Court : Chennai

Decided On : Sep-20-1939

Reported in : AIR1941Mad88

Appellant : In Re: Balija Pullayya

Judgement :

Burn, J.

1. The appellant has been convicted by the learned Sessions Judge of Kurnool of abducting a woman with intent that she might be murdered (Section 364, Penal Code) and also of murdering the same woman (Section 302). He has sentenced the appellant to death for the offence of murder and to transportation for life for abduction. The woman, whom the appellant is said to have abducted and murdered was a Kapa Gouramma, a widow who lived in Rajoli in the Nizam's Dominions and also had a house in Kurnool. She had two daughters (P.Ws. 4 and 5) who-were apparently living by prostitution, though P.W. 5 at the time of the murders of Gouramma was said to be in poor state of health. The appellant was on terms of illicit intimacy with the younger daughter, P.W. 4. It is alleged that he was supposed to be paying her Rs. 6, a month but that his payments were irregular and P.W. 4's mother objected to her association with the appellant on account of his meanness. It was alleged that he had once given her a pair of kammals and that on a pretext of being in want of money he had taken them back from her and pledged them. The mother therefore according to the prosecution

was trying to break off the association between P.W. 4 and the appellant, and this is supposed to have been the appellant's principal motive for the murder. The learned Sessions-Judge thinks that he had another motive in that he was badly in need of money and that Gouramma had some cash and also some jewels.

2. Gouramma's corpse was found on the front verandah of her house in Kurnool on the morning of 20th February. Her throat: had been cut and her ear lobes also had been cut. There is no reasonable doubt about the fact that she was murdered by somebody who wanted to steal her jewels and whatever else she had. The doctor who made the post mortem examination of Gouramma's body on the afternoon of 20th February was not able to fix the time of death. He said that in his opinion death would have occurred between 20 and 40 hours before he made the post mortem examination which was at 5-10 P.M., on 20th February. According to his opinion Gouramma must have died some time between 1 A.M. and 9 P.M. on 19th February. The doctor's evidence does not fix the time-nearer than that.

3. The evidence against the accused went to show that on the afternoon of 18th February he took Gouramma with him by bus from Rajoli to Kurnool. There was evidence to-show that Gouramma came to her house at Kurnool on the evening of that day about evening meal time, and that the appellant came to her house about an hour later. There was also evidence that the appellant was heard talking to the deceased in herhouse at about 10 P.M. on 18th February. One witness (P.W. 11) says that they were talking angrily and quarrelling. Nobody appears to have seen the appellant leave the house of the deceased and according to the prosecution he was next seen on the morning of the 19th plying his trade as a tailor in the main bazaar. The appellant was arrested on the evening of 21st February in his own house in Kurnool. The only other evidence of any importance is that on the Cuddappah slabs with which the verandah of the deceased's house is floored foot prints in blood were found near the corpse. A foot print expert (P.W. 6) took impressions of the appellant's feet in goat's blood on Cuddapah slabs of a somewhat similar degree of smoothness. He said that he was satisfied that the foot prints found on the Cuddapah slabs near the corpse were the foot prints of the appellant. This is briefly the substance of the evidence for the prosecution. All the assessors expressed the opinion that the appellant had not been proved to be

guilty either of abduction or of murder. The learned Sessions Judge disagreeing with them has convicted him for both the offences.

4. So far as abduction is concerned, there is no evidence upon which the appellant could be convicted. A person is said to abduct another person if he 'by force compels or by any deceitful means induces any person to go from any place,' (Section 362, Penal Code). In the present case there is nothing to show that the appellant compelled Gouramma by force to accompany him on 18th February from Rajoli to Kurnool. There is nothing to show that by deceitful means he induced her to go. On the contrary P.W. 4 the younger daughter of the deceased said quite clearly that it was she who had asked her mother to go with the appellant to Kurnool 'for redeeming the kammals and buying sari and ravikkai.' The other daughter (P.W. 5) does not say anything about the accused offering any deceitful inducement to her mother to persuade her to go with him to Kurnool. The conviction for abduction is therefore without any foundation in the evidence and it must be set aside.

5. The conviction for murder also, we think, must be set aside. The evidence of the prosecution witnesses is gravely discrepant with regard to the date on which the appellant and the deceased left Rajoli together to go to Kurnool. In the complaint (EX. E) which was given at the police station in Kurnool by P.W. 4 after the discovery of the corpse, P.W. 4 has stated that the appellant came to Rajoli 'the day before yesterday (Saturday).' That was of course the 18th February. P.W. 5 in her statement under Section 164, Criminal P.C., (EX. G) recorded on 24th February also said that the appellant had come to them 'last Saturday.' The evidence of Masamma, a woman of Rajoli who said that she was the discoverer of the corpse, is to the same effect. But this does not fit in with the theory of the prosecution. According to P.Ws. 4 and 5 when the appellant came to them at Rajoli he wanted to persuade Gouramma to allow him to continue his intimacy with P.W. 4. The appellant, they say, professed, repentance and a purpose of mending his ways. According to P.W. 4,

accused then told my mother not to be angry with him and said that he would redeem the kammala and buy me a new sari and would treat me well.

6. It was in order to redeem the jewels and to buy new sari that the appellant was going from Rajoli to Kurnool. But both P.W. 4 and P.W. 5 say that the new sari was to be bought for the festival, i.e., the festival of Sivarathri. They both say that the date on which the appellant arrived at Rajoli was two days before the Sivarathri festival. They both say that the festival was still to come off, They both say that their mother went away promising to return for the festival. Both of them, and P.W. 7 also, say that when P.W. 7 started for Kurnool a few hours after Gouramma. had gone, the daughters begged her to see their mother at Kurnool and to remind her to come back for the festival. Unfortunately for this theory Sivarathri was over on 17th February. The same blunder appears in the evidence of P.Ws. 10 and 11 two young prostitutes who use one half of Gouramma's house in Kurnool as their place of business though they sleep elsewhere. Both these girls said that the accused and Gouramma came back on 'Saturday preceding Sivarathri.' That Saturday was of course the 11th February and not the 18th February. The whole theory upon which the prosecution case is based is therefore groundless.

7. The learned public prosecutor, when we heard arguments in this case conceded that unless the circumstantial evidence connected with the bloody foot-prints could be relied upon, there was really no substantial case against the appellant. We thought that the judgment of the learned Sessions Judge with regard to, these foot-prints was not satisfactory because he had taken the opinion of the foot-print expert as conclusive. His judgment shows that he did not form any opinion of his own with regard to the identity of the foot-prints found near the corpse with the foot-prints of the appellant. The Cuddapah slabs and the specimen footprints had not been sent up to this Court when the appeal first came on for hearing and we thought it necessary to send for them and to examine them ourselves. It is not proper for a Judge to be guided in such matters as this entirely by the evidence of an expert. The expert's opinion is valuable but it must be supported by statements of fact, the accuracy or otherwise of which can be verified by the Judge. The result of our examination of the foot-prints, taken with the evidence of P.W. 6, is that we are not ourselves satisfied that the foot-prints found near the corpse were made by this appellant. There were five prints altogether, one of them being a fairly complete print of a left foot and four being partial prints of a right foot. The expert

took for comparison two prints each of the right and left feet of the appellant. The expert says that he had ten reasons for coming to the conclusion that the left foot impression which was found near the corpse must have been made by the appellant. He says that it corresponded to the specimens in general size and shape and in the shape and size of the heels. He says that the pad and toe impressions were similarly identical, that the distance between one toe and the others was the same in both sets, that the relative position of each toe with the others was the same on both sets of impressions and so forth.

8. Now this is not strictly accurate. The pad and toe impressions are not identical. In both the specimens made by the appellant after treading in the blood of a goat the marks made by the toes are very much smaller in area than the toe marks found on M.O. 5. But our principal reason for refusing to follow the opinion of the expert is concerned with the partial prints of the right foot. These are M.Os. 4, 6, 7 and 8 and the specimens are M.Os. 9 and 10. In M.Os. 9 and 10 there are clearly marked the prints of all the five toes of the appellant's right foot. But in none of the prints on the M.Os. 4, 6, 7 and 8 is there any mark of a little toe. The expert has not been properly cross-examined with regard to this. He says that the impression of the little toe in M.O. 6 is missing. That is quite true, but he does not say that the impressions of the little toe is missing also from the other three prints of the right foot nor why in spite of this difference he still calls the impressions 'identical'. We find ourselves unable to say with any confidence that the foot-prints found near the corpse have been made by this appellant. The learned Sessions Judge in para. 17 of his judgment has stated that 'the foot impressions found on the slabs are shown to be impressions in human blood.' This is not, strictly speaking, accurate. It is highly probable that they were marks of human blood, but these Chuddapah slabs were not submitted to the chemical examiner and there is no certificate either of the chemical examiner or the imperial serologist to show that the stains in M.Os. 4, 5, 6, 7 and 8 are stains of human blood.

9. There is nothing we think in the conduct of the appellant from which it can fairly be inferred that he was the murderer of Gouramma. The learned Judge's views on this point are derived mainly from the evidence of P.W. 7. This woman lives in Rajoli and as already noticed, she says that she went to Kurnool a few hours after

Gouramma. She travelled by bandy and arrived at Kurnool on the next morning and she says that she went to the house of the deceased and found it was locked. She inquired of the shop keeper who lives opposite (P.W. 9) but he could not tell her anything about Gouramma. She says that before going to Gouramma's house she had seen the accused in the bazaar and that he had told her that Gouramma was in her house. Then she says that she went back to the accused after she found the house locked and told him and he said 'Oh, she must be in the house. Go and find out.' Then she says that she visited him a third time and again he told her that Gouramma would be at home. After that she went again to Gouramma's house and on the advice of P.W. 9, pushed at the door and then peeping through the chink saw Gouramma lying dead across the verandah in a pool of blood. She says that she went and told P.W. 9, the opposite shop keeper what she had seen but that P.W. 9 advised her to keep quiet as it was no business of hers and there was no need for her to get into trouble about it. But she says that she went again for the fourth time to the appellant and tried to find out what he had to say without disclosing what she had seen. The accused, she says, replied, 'I shall give you one cheera, and I shall give Chinna Rosamma (P.W. 4) another cheera.' Then the witness says she replied ironically to the accused 'You have given one woman a cheera. Now she is lying on her back. You may do the same for me' and with these remarks she went away to the cart stand, purchased her fruits, kept quiet all day, travelled by night in a bandy back to Rajoli and then informed the daughters of Gouramma that their mother had been murdered. This woman's evidence is entirely unreliable and it is rather astonishing that the learned Sessions Judge should have paid any attention whatever to it except to denounce it as perjury.

10. It is quite incredible that if the accused had murdered Gouramma the night before, he would have persistently told this woman to go to Gouramma's house because she would be found there. Moreover, when this woman made a statement under Section 164, Criminal P.C., to the Sub-Magistrate on 24th February, her description of what she said to the accused and what he said to her after the discovery of the corpse was very different. She then said (vide Ex. H), 'I went to where Pulliah was and inquired him as to whether Gouramma had gone.' He replied 'Madam, she is at the house. Where could she go.' I said, 'You have killed her and laid her in the house and often and often you tell me that she is at

the house. What do you mean by your talking in this way.' He turned a deaf ear to what all I said to him. He never replied to my queries.' This is a vastly different account from the one which she gave in the Sessions Court. Moreover, P.W. 9 the shop keeper has stoutly denied from the first that she ever came and told him that she had discovered, Gouramma's corpse. The learned Sessions Judge accepts this evidence of P.W. 9 as true but passes over P.W. 7's lies with the remark that she was merely 'trying to attribute to herself a civic consciousness which she did not possess.' We must observe that this is not at all a proper attitude for a Sessions Judge to take up in the presence of deliberate perjury. The evidence of P.W. 7 should have been rejected in toto. The evidence is quite insufficient to sustain the conviction of the appellant for murder. We therefore set aside the conviction and sentence of death and direct that the appellant be released forthwith.

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