

In Re: Pullannagari Rami Reddi and ors.

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Court : Chennai

Decided On : Nov-24-1939

Reported in : AIR1941Mad238

Appellant : In Re: Pullannagari Rami Reddi and ors.

Judgement :

Mockett, J.

1. The three accused have been convicted and sentenced to death for the murder of one Akkammal, the wife of accused 1. The charge alleges that Akkammal died of suffocation. Her body was found in the village well on the morning of 17th March at about 9 A.M. The medical evidence was to the effect that she had died of suffocation and not of drowning. For the present we will discuss the evidence on the basis-that Akkammal was in fact murdered although it will be necessary to return to an investigation of the medical evidence at a later stage. The plan Ex. W, indicates that accused 1 lived with his wife at Gangapurampalle in a kottam which is next to the main house in which his parents, P.W. 3, her husband, and her children lived. There is no doubt that accused 1 and his wife were not happy. Accused 1 had married a second wife and had been ordered by a Magistrate to pay Akkammal Rs. 10 a month for maintenance. Ex. J is the revision petition filed against that order, which was dismissed by King J. There is evidence by P.W. 1 the uncle, that accused 1 illtreated his wife. The case for the prosecution is that accused 1 hired accused 2 and 3, to murder his wife and that they all three

together achieved this purpose. The evidence against accused 1 is of a different character from the evidence against accused 2 and 3. The evidence against accused 1 consists largely on his conduct on the night of Akkammal's death and after, and the case against accused 2 (and in a measure against accused 3) rests almost wholly on a confessional statement made by accused 2, Ex. E. The principal witness against accused is P.W. 3. She is accused 1's sister. Her story is that at midnight on 16th March 1939 she was woken by a cry, she came out of the house and saw accused 1 outside the kottam. She said to him, 'What Ramanna, I heard a noise here,' to which accused 1 replied, 'There is nothing. You had better go and lie down.' She does not appear however to have been easy in her mind because she woke her mother P.W. 4 and sent her to fetch P.W. 5 her husband. He came and then, in her evidence, she says:

I told him that I did not know exactly what had happened but I had heard a cry in my sleep.

2. In the statement taken from her under Section 164, Criminal P.C., she said much the same. This statement was taken on 20th March 1939. But the next part of her narrative is important, namely, that she, P.W. 5 and P.W. 6 went to the kottam to see what had happened, and that neither accused 1 nor Akkammal was there, but the beds were still spread out. Witnesses were called to corroborate P.W. 3's story. We must observe that P.W. 1 and P.W. 2 were called before P.W. 3 and it is difficult to understand how, until P.W. 3 had been called it was possible for evidence to be admitted of what she had said in the absence of accused 1. However, this was done and P.W. 1 stated that on 17th he questioned P.W. 3 who described her conversation with accused 1 in very different language. According to P.W. 1, P.W. 3 stated that about midnight she heard Akkammal cry out, 'Chinnamma, I am dead,' and on going to make enquiries accused 1 said, 'Do you want to send me to jail now? Go and lie down.' P.W. 2, the mother of Akkammal, also states that what P.W. 3 told her was that Akkammal cried out, 'Chinnamma, I am dead,' but P.W. 2 also states that P.W. 3 had told her that the deceased had fallen into a well and died on the 16th night. The above part of the evidence of P.W. 1 and P.W. 2 was inadmissible at the stage it was given, and in any case if that inadmissibility can be cured, it does not confirm P.W. 3's statement but on the

other hand shows that a variety of statements is said to have been made by her. But P.W. 3 was examined at the inquest early on the morning of the 17th and there she said nothing about having been woken in the night by a cry. On the other hand Ex. XV shows that early next morning she got up and called to Akkamma to pound sajja, that none replied and so she opened the door and went inside the house.

3. It is of course said for the prosecution that P.W. 3 being the sister of the accused is making her evidence as favourable to him as possible. Other witnesses were called to corroborate her, i.e., P.Ws. 4, 5, 6 and 7. P.W. 4 professed to have no recollection of what happened. So her deposition in the Magistrate's Court was filed under Section 288, Criminal P.C. But that statement does not go much further than showing that P.W. 3 woke in the night owing to some noise which she said according to P.W. 4, might have been made by a sheep or a goat. P.W. 5 confirms P.W. 3. There is a somewhat contradiction in his evidence. He says that P.Ws. 1 and 2 did not come to his house the following night, a statement which P.W. 1 had made in Ex. A. There is no doubt that P.W. 3 was seriously alarmed and that P.W. 5, her husband, was fetched from his work at the sugarcane mill to investigate. P.W. 7 states that he was called by P.Ws. 5 and 6 to search for accused 1 and the deceased that he went to accused 1's house and found accused 1 and the deceased absent, that he then went to Nimmanapalle where he saw accused 1, and Papulamma, a woman associate of accused 1, that he asked accused 1 where Akkammal was to which accused 1 replied, 'She has gone somewhere.' It is clear from his examination at the Sessions that accused 1 admits he and his wife did go to sleep in his house that night. This is borne out also by Ex. N which is a report made to the village Magistrate by accused 1 himself. It is said to have been made at Nimmanapalle at 10 A.M. on 17th but the evidence of the village Magistrate himself (P. W. 31) shows that actually at 7 A. M. on that day accused 1 had reported that his wife was missing, on which P.W. 31 told him to search for her and that at 9 the accused came back and said that his wife's duppati was on the bank of a well near the village. The village Munsif accompanied him to the well and the body of Akkammal was discovered in the water.

4. Accused 1 was arrested on 31st March in a tope at Nimmanapalle by P.Ws. 31, 18 and 24. It is stated by the Sub-Inspector that accused 1 was not present at the inquest, but this does not appear to be correct because the village Munsif (P.W. 31) states that accused 1 was present at the well when the inquest was held. P.W. 29 also admits that although he did not see him at the inquest he saw him in the crowd. It does seem however that accused 1 was not playing a very important part and the theory of the learned trial Judge is that he was keeping in the background awaiting events and, when they did not take a favourable turn, disappeared. However this may be, it does appear to be clear that at an early stage of these proceedings the notion that accused 1 had murdered his wife was becoming a subject of public gossip and it is well known that accused persons do frequently abscond even though they may be innocent of the offence. P.W. 6 refers to a meeting at Nimmanapalle with accused 1 and to P.W. 5 asking accused 1, 'Where is Akkamma?,' to which he replied, 'I too am searching for her.' If any hostile inference is to be drawn against accused 1 as to his presence at Nimmanapalle, it should be stated that the learned Judge did not question him as to why he was there and he thus had no opportunity of explaining his presence there.

5. The evidence, therefore, against accused 1 may be summarised as follows : It depends very largely on P.W. 3, the effect of whose evidence is that, hearing a noise at midnight she went to accused 1's house and there saw him and was told by him that there was nothing to be concerned about and that she could return to her bed, that later accused 1 and his wife were both found to be absent from the house; and that at 9 A.M. on the following morning, the 17th, Akkammal's body was found murdered in a well. There is the further evidence given by P.W. 28 that accused 1 and 3 were seen whispering together under a tree at Nimmanapalle on the evening before Akkammal died, a matter which was reported to the Sub-Inspector after the event. This witness had never seen accused 3 before that day but was able to identify him on the following Sunday (the 19th). The answer of accused 1 to this is to the effect that he went to bed that night with his wife and that the next morning he woke up and saw her missing. He denies the evidence of P.W. 3 and P.W. 28. He also says he was present at his house on the day on which the inquest was held, a matter which appears to be in part corroborated by P.W. 31 and others. He denies that he was arrested in the manner alleged. He

says that he went himself to the village Munsif's house. It is convenient now to turn to Exs. N and A. It must be remembered that Ex. N was given on the morning of the 17th to the village Munsif by accused 1 himself and it is a simple report of a quarrel with Akkammal and of her subsequent disappearance and later the discovery of her corpse in the well. Ex. A is the first information report which was given on the 18th to the Sub-Inspector of Police at Agraharam Camp at 8-30 A.M. The contents of that report cannot be evidence, but it has been brought to our notice and we cannot overlook it that it contains a statement by P.W. 1 that one Venkata Eeddi (who was not examined) had reported to him that Rami Reddi at 10 P.M. on 16th March had said to him (Venkata Eeddi),

my wife Akkammal fell into a well. I gave her two blows last night. My wife thereon ran up and I too followed her. She, who had been going two chains ahead of me, fell into a well.

6. Now, this is a totally different version of the affair and Venkata Reddi is not called as a witness; but, if it is true, it is at least not inconsistent with the story of P.W. 3. Akkammal may have cried out when she was struck which would account for the cry in the night spoken to by P.W. 3. That she ran away and threw herself into a well might account for the absence of both herself and her husband. Much therefore must turn on the evidence of whether this woman was or was not suffocated as charged by the prosecution.

7. Before dealing with this topic, it is convenient to turn to the case against accused 2 and 3 which stands on a totally different basis. We have alluded to the mysterious Venkata Reddi referred to in Ex. A. This is not the only feature of this case which arouses inquiry. It is not at all clear how it was that accused 2 and 3 were arrested. It is alleged by the police that they were arrested because they were seen by P.W. 10 passing a tamarind tree on the way to Nimmanapalle on the 15th, Wednesday. But as P.W. 10 was unable to see the accused from the witness box this explanation cannot be a fact. This incident is on a par with the evidence of P.W. 18 who claims to have searched the village for accused 1 who was unquestionably there all the time. But, whatever be the reason, accused 2 was arrested at 10 P.M. on 18th March and accused 3 on the morning of 19th March.

They both made statements to the police, parts of which have been admitted in evidence under Section 27, Evidence Act. At 10 P.M. on Saturday the 18th March accused 2 made a long statement Ex. B, of which the following has been admitted by the learned Sessions Judge under Section 27, Evidence Act:

By that time Rami Reddi's wife, Akkammal, struggled for about ten minutes and expired. We tied the bundled up corpse to the bamboo. I and Mondri Bamudu then went by a stream running eastwards, then along a path proceeding north of the woodapple tree, and then to the Racha of ragi (popiar) trees, and turned to the west and threw the pole with which we carried the corpse over the fence of Syed Sabna's mango tree.

8. Accused 3 also made a long and detailed statement, Ex. B at 2-30 P.M. on Sunday the 19th, of which the following has been admitted by the learned Sessions Judge under Section 27, Evidence Act:

I went to Nimmanapalle on Wednesday.... I and Rami Reddi were together going sometime after sunset, when another Saheb too saw us.

9. The difference of the dates of Exs. E and R, the above statements, is important, especially to accused 3. After making the statement Ex. E, accused 2 took P.W. 33 (Sub-Inspector) and others of whom P.Ws. 82 and 9 were called and showed M.O. 1, a bamboo pole. So Ex. E was admitted on the basis that the pole was discovered in consequence of the information received in Ex. E. Exhibit B was admitted as leading to the discovery of the fact testified to by P.W. 28 that accused 3 and Rami Reddi were together sometime after sunset on the 15th. The Sub-Inspector (P.W. 33) stated that, as a result of that statement, he discovered P.W. 28 who did depose to the fact that accused 1 and 3 were together. Apart from these statements, the evidence against accused 2 and 3 may be summarized as follows: Accused 2 was seen by P.W. 10 on the 15th evening with P.W. 3, but this witnessed eyesight has already been shown to be faulty. P.W. 11 on Wednesday saw accused 2 and 3 under a tamarind tree by the side of the road. P.W. 27 states that he saw accused 2 and 3 at ten minutes past nine in the morning between his village Reddivarepalle and Chintaparti. He claims to know both the accused by sight. Then there is a group of witnesses, P.Ws. 29, 30 and 33. P.W. 29 is the

karnam of Agraharam village where the Sub-Inspector (P.W. 83) was at the time the crime was reported to him. P.W. 30 was the acting village Munsif of Agraharam in March. These two and the Sub-Inspector (P.W. 33) state that they were together in connexion with the investigation of a case of theft, and that at 2 A.M. on the night of the 16th, they saw accused 2 and 3 coming together; they questioned accused 2 who said he was Syed Kassim of Nimmanapalle; they said they were going to the Gunti Gamgamma festival at Chintaparti, which festival was in fact going on. Accused 2 had a torchlight. At that time, says P.W. 33, there was no reason to suspect them and they were allowed to proceed. The Sub-Inspector received news of the offence at 8-30 A.M. on the 18th at Agraharam and he thereupon proceeded to investigate. P.W. 21 says he saw accused 2 and 3 together at a village five miles from the scene of Akkammal's death on the Thursday night, which is 16th March.

10. It is convenient now to deal with the case against accused 3. The only evidence against him is that he was in the company of accused 1 and 2 at or about the time of the crime. His confessional statement, Ex. R, merely led to a discovery of a witness speaking to this fact as regards A-1. Exhibit E is not evidence in the correct sense of that word against accused 3. A confession by a co-accused may be taken into consideration against another accused and confessional statements under Section 27, Evidence Act, have been held to come within the terms of Section 30, Evidence Act, by this High Court : vide *In re Athappa Goundan* ('37) 24 A.I.R. 1937 Mad. 618. But there must be admissible evidence pointing to the accused's guilt. In assessing the probative value of that evidence a co-accused's confession may be taken into consideration. The evidence against accused 3 as already stated is only that he was in the company of the other accused before the crime as testified to by P.W. 28 and after the crime as testified to by the other witnesses referred to above. This being so, we do not consider that the Court is entitled to convict accused 3 when the admissible evidence against him goes no further than we have indicated. Such a conviction in this case would amount to a treatment of Ex. E, as substantive evidence against accused 3.

11. There remain the cases of accused 1 and 2. It must be remembered that the parts of Ex. E admitted do not contain any confession of the killing of Akkammal. The effect of Ex. E is that Akkammal was struggling and died. Why she was struggling is not revealed. The rest of the statement deals with the disposal of the body. But Mr. Grant has asked us to read the whole of that confessional statement and he argued as follows : This statement was never made at all by accused 2. It must be read not as a statement of accused 2 at all and therefore not within the prohibition of Section 25, Evidence Act. It must be read in order to show that the case for the prosecution is demonstrably false because the actual evidence, and especially the medical evidence, is inconsistent with the statement put into the mouth of accused 2 by the police. A Court is always reluctant to shut out any argument advanced by an accused person; and we have examined this statement in the interests of the accused not as a confession but from the point of view advanced by Mr. Grant. An examination of this statement shows that it is alleged that Akkammal met her death by accused 8 'with all his strength squeezing her throat, face and nose with both of his hands.' Mr. Grant asks us on the medical evidence to say firstly that it is not certain that this woman was murdered at all and secondly that the mode of her death as testified to by the doctor does not agree with the prosecution case as falsely put forward in Ex. E. Exhibit L is the post mortem certificate and P.W. 16 is the sub-assistant surgeon who conducted the post-mortem. He expresses the opinion, and a very definite opinion, that this woman was not drowned, and he gives six reasons for arriving at that conclusion and he stated, although none of the reasons for concluding that death was not due to drowning was in itself conclusive, yet, if death had been due to drowning, many of these characteristics would have been found. There were no characteristics of death by drowning but there was evidence of suffocation. He found fourteen injuries on the body of the deceased. Of them, referring to Ex. L injuries 2, 3, 4, 6 and 7 were semi-circular nail-marks, and in addition, says the doctor, injuries 8, 9, 10 and 14 might have been caused by nails. The effect of this evidence is that injuries, 2, 3, 4, 6 and 7 were caused by nails, in his judgment, owing to the semi-circular marks and the other injuries mentioned might have been caused by nails. The reasons for saying that death was due to asphyxia due to suffocation was largely based on the marks of the nails and violence round the mouth, but he

considered also the dilated pupils; the right side of the heart being engorged and organs congested show death by asphyxia. There was mud on the toes of both feet and nails and both fingers. The defence relied strongly on the latter feature. Lyons' Medical-Jurisprudence, Rdn. 5, p. 295 supports the view that mud in the nails indicates struggle in the water during life and is presumptive evidence in favour of death by drowning. But such a presumption is not absolute and other circumstances may of course negative it. But the defence also relies on the fact that there is no evidence of any marks on the throat and it must be remembered that accused 2 is said to have squeezed her throat with all his might. But it must be remembered also that her face and nose were also squeezed and there is definite evidence of finger-marks on the face and nose. We have examined the evidence of the doctor and we are impressed with its care and detail and it seems to us to come to this : that the only feature which the defence can suggest indicates drowning is the presence of mud on the toes and nails, and this in a country of bare-feet and not invariable cleanliness can scarcely weigh against the fact that no single characteristic of drowning is found by the doctor. We are satisfied that this woman was not drowned but met her death by violence and that the doctor's evidence is reliable beyond question. It must be remembered that the process described in Ex. E combines both strangulation and suffocation and it may be that this woman was suffocated rather than strangled, which is in complete accord with the doctor's evidence.

12. Akkammal was therefore murdered shortly after taking her meal on the night of 15/16th March 1939. Accused 1 was with her that night on his own admission. At midnight a cry was heard from the house and P.W. 3, an indisputably friendly witness, went to investigate. She was told there was nothing wrong by accused 1. Later that night, others summoned by P.W. 3 went to the scene and they found not only the deceased but - this is of importance - her husband absent. The next morning the body of Akkammal is found in the well suffocated. What happened on that night is known of all men to accused 1. What is his answer? At the Magistrate's Court he reserved his defence. At the Sessions he stated that the next morning he woke up and saw her missing. He denies that he ever saw P.W. 3. These facts undoubtedly cast the utmost suspicion on accused 1; but the question is, do they amount to mere suspicion, do they contain that element of

certainty so essential to a conviction in a criminal case? Accused 1 has been shown to have been associated with accused 3; we are acquitting him and therefore no hostile inference can be drawn against accused 1 from that association. There is nothing in the confession of accused 2 to be taken into account against accused 1. We think it proper to say that, while appreciating the extreme difficulty of analysing a confessional statement and admitting only such portions of it as relate distinctly to a fact discovered, it is not impossible that the learned Sessions Judge might have admitted far more than he did and that, had he done so, the position of accused 1 might have been very different. But the prosecution have not thought fit in this case to apply for the reception of further evidence and we, therefore, are considering those portions of Ex. E which are admitted and no more. We have already alluded to Ex. A which reveals that a witness who was not called stated that accused 1 had said that his wife fell into a well in the sense that as a result of a quarrel she threw herself therein; and we have already alluded to certain unsatisfactory features about the denial of the presence of accused 1 in that village. As a result, our conclusion is that the evidence is not conclusive, that there is a doubt, and that accused 1 is entitled to the benefit of 'that doubt.

13. As our decision with regard to accused 1 has been arrived at by a strict application of the rules of evidence, similarly in the case of accused 2 we judge, and it is well to remember that if of three equally guilty people two are so fortunate as to escape owing to the evidence not sufficiently implicating them, it is neither right nor logically sound to acquit the other accused against whom the evidence is sufficient. In the case of accused 2 according to his own admission, he carried the body of a woman demonstrably shown to have been murdered, and secreted it in a well; the pole on which the body was carried being discovered as a result of his admission, and he was present in the neighbourhood which enabled him to commit the crime was certain. His explanation at the sessions of Ex. E is that, coerced and 'beaten by the police, he agreed that he would 'say as they desired and then they recorded as they liked,' and he denies that he either showed M.O. 1 the pole or that he associated with accused 3. It will be noticed that he did not say in the Magistrate's Court that the statement was extracted by coercion. We do not think there is any substance in the suggestion that Ex. E was extracted in the

manner suggested by ill to defence, and we have already made clear that we have examined it only for a consideration of the defence theory that it was it pure concoction, but it will be observed that that is not strictly the case of accused 2. Ho said that he 'would say as they (the police) desired. Then they recorded as they liked.' We entirely reject the idea that the police would have put the whole of this rigmarole into the mouth of this accused when so many much easier methods were open to them had they desired to avail themselves of such methods. But, owing to the exclusion of much in Ex. E that might possibly have been admitted and again owing to the absence of any application by the prosecution to admit further evidence, we find nothing in Ex. E to amount to an admission that accused 2 committed the offence of murder. He was however unquestionably engaged in disposing of the body of a murdered woman. In his case we are not satisfied that the evidence against him is sufficient to warrant a conviction for murder. We however are satisfied beyond doubt that he has committed an offence under Section 201, Penal Code.

14. The result of our conclusion, is that the convictions and sentences on accused 1 and accused 3 are set aside, their appeals allowed and they are acquitted and will be set at liberty. The conviction and sentence of accused 2 under Section 302, Penal Code, is set aside and he is acquitted; but he is convicted of an offence under Section 201, Penal Code, and is sentenced to rigorous imprisonment for seven years.