

Chinnu Vs. Emperor

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Court : Chennai

Decided On : Jan-24-1936

Reported in : AIR1936Mad628; 165Ind.Cas.192

Appellant : Chinnu

Respondent : Emperor

Judgement :

Menon, J.

1. The appellant has been convicted of the murder of one Nachammal and sentenced to death by the Sessions Judge of Coimbatore. The husband of the deceased died about five years ago leaving some property. The deceased leased it to P.W. 5. The appellant, who was intimate with the deceased even during the life-time of her husband, prevailed upon the deceased to ask P.W. 5 to surrender possession of the property. The latter, it is said, at the instigation of P.W. 4, a brother of the deceased, who was not on good terms with the deceased because the daughter of the deceased was not given in marriage to him, refused to surrender possession. It is alleged that, in order to get possession of the property, free from the obstruction of P.Ws. 4 and 5, the appellant took the deceased in the evening of 25th August 1935 towards Pannaikinar and killed her on the way at about 8 p. m. at a place about six furlongs from their house and at once made report to the Village Munsif, foisting the murder on P.Ws. 5, 6, 7 and another. A

suspicion, however, fell on the appellant after the Sub-Inspector examined some witnesses in the village, he was arrested, and on information given by him, the aruval (M.O. 1), which is alleged to have been lent to the appellant by P.W. 15, and the bichuva (M.O. 3), both bloodstained, were recovered from a place about 50 yards from where the dead body was found. There were some marks of blood found on the cloth worn by the appellant. This is the case for the prosecution.

2. It will be seen that the evidence against the appellant is entirely circumstantial, and apart from the motive alleged, namely to get possession of the properties, the only incriminating circumstances against him are that M. Os. 1 and 3 were discovered on information given by him and that his cloth had marks of blood on it. But neither before the committing Magistrate nor before the Sessions Court was the attention of the appellant drawn to these circumstances when he was examined under the provisions of Section 342, Criminal P.C. Before the Committing Magistrate he was simply asked:-'What have you to say with reference to this case?' and he answered: 'I did not kill Nachammal. I did not do anything at all.' In the Sessions Court, he was asked:- 'Do you wish to add anything more?' and he answered: 'No. My elder brother's son and his wife Ranganayaki should be examined.' The important circumstances on which the conviction is based were not specifically pointed out to him, to enable him to give an explanation, if any, which is really the object to the questioning under Section 342, Criminal P.C.

3. In cases where the evidence against the accused is not direct but entirely circumstantial, we think it is all the more necessary that the circumstances which, if unexplained, would lead to conviction, should be pointed out to the accused by the Court, so that he may have an opportunity to give his explanation if any, in regard to them. It may also be observed that in this case the witnesses who speak to the recovery of the articles do not appear to have been properly cross-examined. In these circumstances, especially the failure to comply properly with the provisions of Section 342, Criminal P.C., we think it is necessary in the interests of justice to send the case back for retrial. And as we have decided to do so, we make no observations whatever on the merits. We accordingly set aside the conviction and the sentence and order under Section 423, Criminal P.C., that the appellant be retried by the Sessions Judge, Coimbatore, for the offence

charged.

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