

In Re: Kirukku Mayandi

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Court : Chennai

Decided On : Aug-19-1957

Reported in : 1958CriLJ1042

Judge : Ramaswami, J.

Appellant : In Re: Kirukku Mayandi

Judgement :

Ramaswami, J.

1. This is an appeal preferred by accused 2 against his conviction and sentence by the learned Sessions Judge of Madurai in Sessions Case No. 106 of 1956.
2. The facts are : One Ameen Ammal, an aged lady, was carrying on money-lending business at Batlagundu. With her P.W. 1, her grandson aged about 16, and an orphan was Jiving. Her another son Muhammad Kasim was living in Tiruyedagam. Her daughter P, W. 10 was Jiving with her husband in Chityayankottai.
3. On (he night of 1-3-1956 this Ameen Ammal was alone in her house, her grandson P.W. 1 having gone to a cinema in Dindigul. He returned practically in the early morning of 2-3-1956. Therefore, fearing that his grandmother would (take him to task for keeping such a late hour, he laid himself inside a cart standing in the lane north of their house and slept away.

4. On the morning of 2-3-1956 P.W. 1 woke up at 7-30 A.M. and went home. He found the main entrance partially closed. When he went in he found his grandmother lying dead on a cot. There was a pool of blood underneath the cot. Her throat had been cut and a cloth had been pressed on the wound. A pillow was placed over it, weighed with a stone mortar. There was a sheath M. O. 27 of a knife near the cot. The door of the inner room was open. The key of the door was found inserted into the key hole itself. The things inside the room were lying on the ground pell-mell.

5. It has been established beyond reasonable doubt that this Ameena Ammal, who was carrying on money-lending business had taken a large number of pledges of jewels and was also in possession of cash of Rs. 4000 in one-hundred-rupee currency notes prior to her death. This is established not only by the evidence of P.W. 10, but also by the recoveries made in this case. M. O. 28 series promissory notes show that the deceased was in a position to lend more than Rs. 2000. The object of this murder was undoubtedly for gain in the shape of pledged jewels and currency notes which were missing.

6. P.W. 1 raised an alarm and his neighbour P.W. 2 came there and P.W. 1 showed her around. A big crowd gathered. P.W. 1 was advised to go to the Police. He went to the Police and gave the complaint Ex. P-1. The Police came and investigated.

6-a) Two persons were put up for the murder of this unfortunate money-lender, whose only crime seems to have been the hoard of jewellery and money she had. Out of the two, accused 1 was acquitted and we are not concerned here with the case against him. The second of them was acquitted of the charge of murder but was convicted of the offence under Section 411 IPC and sentenced to undergo R. I. for three years. Hence this appeal by the convicted accused 2.

7. The evidence against this accused 2 is as follows: Accused 2 was arrested by P.W. 41 on 10-3-1956 near his garden. P.W. 42 recorded the statement Ex. P-16 from accused 2. Accused 2 took P.W. 42, P.W. 1 and others to his hayrick. Accused 2 dug out the earth in front of the hayrick and picked out a cloth bag which contained M. Os. 1 to 5 and 15 to 18. It was then late in the night. There

was another cloth bag which according to accused 2 had also been hidden there, and the location and recovery of which could not be completed that night.

Therefore, it was done early next morning. Then the other bag containing M. Os. 6 to 14 was recovered. These recoveries were made under proper Mahazars. These constitute one set of recoveries on the information given by accused 2 and pointing out and picking out. The next set of recovery was from Kattakaruppa Tevar of Keeripatti with whom a sum of Rs. 2000 is said to have been entrusted by this accused 2. Kattakaruppa Tevar was not examined by the prosecution as he had turned hostile. But this need not detain us because it was specifically asserted by accused 2 that the money was his own.

8. The third set of recovery was a sum of Rs. '900 from P.W. 13. P.W. 12 testifies that accused 2 pointed out the house of P.W. 13 to P.W. 42 and that from P.W. 13 M. O. 26 series viz., 9 hundred-rupee currency notes were recovered under the Mahazar Ex. P-8. There is no dispute about this recovery also because accused 2 himself says that he had given that sum to P.W. 13 and that it was his own money. The fourth recovery was a sum of Rs. 100 from P.W. 14 and the case for this accused 2 is that he had borrowed a sum of Rs. 100 from P.W. 14 six months earlier and that he had repaid that sum to P.W. 14. P.W. 14 also stated that accused 2 had returned it to him the sum of Rs. 100 seized from him.

9. The following is the identification of the jewellery recovered on the information given by accused 2 ; M. O. 7 had been pledged with the deceased by P.W. 16 along with another jewel each for Rs. 200. P.W. 18 had given M. Os. 10, 12, 15 (a) to P.W. 20 for being pledged with the deceased for Rs. 3/-. P.W. 21's mother had pledged through P.W. 20 M. O. 8 for Rs. 10. P.W. 22 had pledged M. O. 14 with the deceased for Rs. 10. P.W. 23 had pledged M. O. 4 (a), 11, and 15 (b) with the deceased for Rs. 5/-. P.Ws. 25 and 26 had pledged M. O. 3 with the deceased. P.W. 27 had pledged M. O. 17 belonging to P.W. 28 and M. O. 18 belonging to P.W. 29 with the deceased for Rs. 4/- and Rs. 2/- respectively.

I have already mentioned the recovery of the currency notes from Kattakaruppa Tevar, M. O. 28 series, nine hundred-rupee notes M. O. 26 series from P.W. 13 and a sum of Rs. 100 M. O. 23 from P.W. 14. Thus, an appreciable portion of the

loot has been recovered on the information given by accused 2 and from his possession.

10. In addition, it has been established in evidence that accused 2 had purchased new clothes etc., when he became flush with funds and that the same were also recovered from his house along with a new trunk, some other cash and bills for purchase of articles. In this case we have also the information given by P.W. 87, the karnam of Timmanajthampatti that accused 2 has only 1/9th share in his family properties which are A, 8-34 cents of punja and that he would get Rs. 200 to Rs. 300 for his share. In this connection certain attempts made by the learned Counsel for accused 2 to show that accused 2 renovated a well at a cost of Rs. 1500 and that he had invested Rs. 2000 in cattle business ignominiously failed.

There can be no doubt that accused 2 was only a petty cultivator getting about Rs. 200 to Rs. 300 per annum for his share as testified to by P.W. 27. On this evidence the learned Sessions Judge came to the conclusion that accused 2 was in possession shortly after the murder of Ameena Ammal of stolen properties within the meaning of Section 410 IPC and that inasmuch as he did not account for the same but only denied that he was in possession of the jewels which is no explanation at all, the presumption under Section 114 of the Evidence Act, arises that he was either the robber or the receiver of stolen property which was the subject-matter of robbery and that in this case the presumption that he was the receiver of stolen properties could be more safely drawn. In these circumstances he convicted accused 2 under Section 411 IPC and sentenced him to R. I. for three years.

11. The two points of substance urged in appeal are (1) that the recoveries of jewels were made from a place accessible to the public and (2) accused 2 was a substantial man who has adequately accounted in regard to the currency notes.

12. In cases of pointing out, especially of stolen properties, the real question is not so much whether the accused was in physical possession of the properties hidden somewhere or buried in some field as whether he was the person that so hid the properties, for a person who buries treasure in a spot unknown to others is really in possession of it and it does not matter whether it is in a field not in his

occupation or in his own house. The person who hides a thing has possession of it for he has both the Animus and the Corpus.

Possession is acquired whenever the two elements of corpus and animus come into coexistence. Salmond defines the possession of a material object as the continuing exercise of a claim to the exclusive use of it, A person is therefore said to be in possession of a thing when the facts of a case are such as to create a reasonable expectation that he will not be interfered with in the use of it. Thus, a person who hides a thing is in possession of it because he gains thereby a reasonable guarantee of the use of it. Then if the accused does not satisfactorily account for its possession, mere denial is not explanation, *In re Dhyani Gope.* : AIR1947 Pat205 (A) and the presumption under Section 114, Evidence Act can be drawn against him. *In re, Sheikh Khader Sahib* : AIR1950 Mad108 .

13. The clinching question, therefore, as mentioned by Mr. Y. S. Rao in his valuable monograph *Circumstantial and Presumptive Evidence* Page 119 & foil., in cases of mere pointing out is, whether the person who has pointed out has not himself hidden it and this is purely a question of fact. If the Court comes to the conclusion on the facts that the accused has hidden the property in question, one important step in resorting to the aid of illustration (a) to Section 114 of the Act is satisfied, viz., possession. The line of inquiry as to whether the accused person who pointed, out the thing was the person who had hidden it is very clear.

The difficulty with regard to the place where the property is found, being a public place or a place not in the control of the accused *Public Prosecutor v. Pakkiriswamy* A.I.R. 1929 Mad 846. 1929 MWN 785 (B); *Ram Autar v. Emperor* : AIR1925 All478 *Amrit Sonar v. Emperor* 20 Cri LJ 439 : A.I.R. 1919 Pat 330 (B); *Mangalya Ragho v. Emperor* *Sohan Singh v. Emperor* A.I.R. 1930 Lah 91 : 31 Cri LJ 774 (F); *Gul Sheru v. Emperor* A.I.R. 1932 Sind 180 (G); *State Govt., M. P. v. Chhotelal Mohanlal (S)* A.I.R. 1955 Nag 71 (H) is got over if the property is found to be so carefully and cautiously hidden away from human gaze that a member of the public could not possibly know of its presence there and it therefore leads to the inference that the person who knows its whereabouts is the person who secreted it there : *In re, Ayyana The-van* 1931 4 Mad 123 (I); *Sher Mohd. v.*

Emperor A.I.R. 1945 Lah 27 (J); Mt. jamunia Partap v. Emperor A.I.R. 1936 Nag 200 : 37 Cri LJ 1047 (K). .

It is up to the investigating officers to question the accused as to the details of the exact location of the secreted article and to lead evidence as to the secrecy of the place, the correspondence between the details given out by the accused and the actual finding of the article, and the case with which the accused got straight to the point at which the article was concealed, in order to show that the accused must have dealt with the object to justify the knowledge displayed. The detailed knowledge of the location of the secreted object will serve to displace other hypotheses that may be possible though not probable.

The hypothesis that some one told the accused of the place of secretion is displaced by the very knowledge displayed, for it is unnatural that such details of secretion would be conveyed to another out of mere idle curiosity. Finally this hypothesis is totally vacated if the accused does not reveal the name of the person who has imparted to him this precious information, for it is impossible to believe that the accused is prepared to lose his life or liberty for the sake of his friendly obligation to keep the secret, nor is it reasonable to expect any sense of moral obligation in one who has not moved the authorities in the matter till he was himself suspected and questioned.

14. The only other hypothesis is that he managed to see the actual unknown criminal hide the thing. The very knowledge exhibited by the accused is again an infirmity of this hypothesis, for criminals do not secret things unless they make sure that they are not being observed. If the possibility is still to be considered that the real criminal hid the object without knowing that another man was watching him, the very detailed knowledge of the actual place of secretion displayed by the accused person is again an infirmity of this hypothesis, unless it is to be believed that the accused examined the place and the thing hidden after the criminal left the place.

If so, the pertinent question would be why the accused did not bring the matter to the notice of the authorities like an honest man, and if it is a valuable property and he is not honest why he did not appropriate it himself immediately and forestall the

real criminal but was waiting till he was himself suspected and questioned. The irresistible conclusion can only be either that the accused was the real offender or at least an accessory after the fact. Not having revealed the principal offender if he was an accessory after the fact, he must be the principal offender himself, at least one of the principals.

A further circumstance that fortifies this line of inquiry is the multiple discovery. If the accused points out not one incriminating object but a number of them and in different places and under different conditions, the suggestion that the accused might have managed to follow the criminal unnoticed at every stage and obtained a detailed knowledge of every article secreted is, to say the least, fantastic. Above all, it is difficult to understand how the accused was able to know what object would be found in any particular spot and how the object was connected with the crime with reference to which he was able to offer to point out when questioned by the police officer. It is therefore not correct to brush aside every case of mere pointing out as a case of mere innocuous knowledge.

The Madras cases relating to pointing out of properties and which may be studied with profit and from which the aforesaid principles have been deduced by Mr. Y. H. Rao in his *Circumstantial and Presumptive Evidence* (Criminal Law Publications, Gudur. Nellore, South India) p. 119 & foil, are: *Gopala Iyer v. Emperor* 1935 MWN Cri 9 (L); *P. P. v. Edlga Anjanappa*, 1935 MWN Cri 211 (M) : 1931 4 Mad Cri 123 (I); *Venkanna v. Emperor* : AIR1948 Mad261 similar decisions of other High Courts are *In re Ameer Jan* : AIR1945 Bom292 (U).

15. Bearing these principles in mind if we examine the facts of this case, we find that (She two cloth bags containing M. Os. 1 to 18 which have been established beyond doubt to be the pledged jewels etc. stolen from the house or the deceased Ameena Ammal, were recovered from the possession of accused 2 and the presumption arising under Section 114 of the Evidence Act directly arises in this case.

Accused 2 beyond merely., denying the giving of information and pointing out and the recoveries made, does not give an explanation of innocent possession of these articles. Mere denial of the theft or possession is no explanation or

accounting and is not sufficient to rebut the presumption being drawn. The accused should explain how articles belonging to the complainant are found in the possession of the accused shortly after the theft. : AIR1947 Pat205 (A); Lakshman v. Government of Mysore A.I.R. 1952 Mys 83 (V & W). It is not the law that the accused must positively prove his explanation. It is enough if his explanation is found to be reasonably true.

No weight will be attached to the explanation however if it is unreasonable or manifestly inadequate or improbable on the face of it. Keshab Deo v. Emperor : AIR1945 Cal93 Jagannath v. Emperor : AIR1945 All19 In re, Kabatulla : AIR1925 Cal1241 Bhutanath Mandal v. Emperor : AIR1931 Cal617 Horilal v. Emperor : AIR1933 All893 Gangaraju v. State : AIR1950 Mad778 ; State v. Magha . In fact accused 2 put forward two suggestions. One is that these articles were recovered from P.W. 9 and that the Muslims of Batlagundu had foisted them upon him.

There is no reason however to think that the Muslims of Batlagundu had any hand in this matter and there is no reason at all why they should falsely implicate this accused 2. The mere fact that P.W. 11 was inimically disposed towards accused 2's father could not lead to this inference at all. Secondly, it is stated that a large number of persons were present at the time of the search both in the night and in the next morning and that any one of them could have planted these articles. But the evidence in this case clearly shows that though naturally a crowd had gathered, precautions had been taken by the police to cordon off them and it was only accused 2 who after search brought out the bags from inside the hayrick.

In short, though it is quite true that exclusive possession cannot be brought home to an accused if properties are discovered in open places accessible to members of the public, at the same time if the property is found to be so hidden away that no ordinary member of the public could know of its existence there, the fact that it is on that particular person's information and pointing out unaccompanied by any explanation of innocent knowledge the incriminating article was discovered and recovered would lead to the presumption, that he is the person who had secreted it there, It unmistakably shows that this accused 2 was privy to the felony: Ayyaruia Thevar, 1931 Mad Cri Cases 123; A.I.R. 1945 Lah 27 (J); A.I.R. 1936

Nag 200: 37 Cri LJ 1047 (K). Pointing out is evidence of conduct under Section 8 of the Evidence Act.

Thus, where an accused gives information leading to discovery, and the exact spot where the ornaments,, are buried is shown and the articles' are dug out by him from beneath, the question is not so much whether the accused was in physical possession of the ornaments buried in the field, hayrick, etc., though as a matter of fact a person who buries treasure in a spot unknown to others is really in possession of it, whether it is in a field or hayrick accessible to every one or in his own house.

The important point is that the circumstances and conduct of the accused point clearly to his knowledge of the exact spot where the ornaments were and, in the absence of any explanation, the reasonable inference is that he put them there himself. Such conduct taken in conjunction with other evidence is enough to warrant a presumption of complicity in the offence A.I.R. 1936 Nag 200 (K): Public Prosecutor v. India China Lingiah : AIR1954 Mad433 ; Lachhman Singh v. The State : 1952 CriLJ863 .

16. Turning to the recoveries of currency notes, the case for this accused 2 is that it is quite true that on his pointing out the sums of Rs. 2000, Rs. 900 and Rs. 100 were recovered of Kattakaruppa Tevar, P.W. 13 and P.W. 14 but that those sums are his own moneys. On the other hand the prosecution has established the positive and the negative viz., that at the time of the murder Ameena Animal had in her house cash of Rs. 4000 in one hundred rupee currency notes: Vide the evidence of P.W. 10 and probalised by M. O. 28 series, and they were missing when her murder was discovered.

The prosecution has established that this accused 2 was not in a position to own these large sums of money. P.W. 37, as already stated, testified that accused 2 owns an 1/9th share in his family properties which are Ac. 8-34 cents of punja (dry) and that he would get Rs. 200 to Rs. 300 for his share. The suggestion of accused 2 that his family had renovated a well at a cost of Rs. 1500 and that accused 2 had invested a sum of Rs, 2000 in cattle business was found to be baseless. In addition to these sums of moneys, it has also been found that accused 2 had

purchased new clothes, etc. and the same were recovered from his house along with a new trunk, some other cash and bills for the purchase of the articles.

This changing over suddenly to affluence is incapable of explanation except on the hypothesis of acquisition of the fruits of crime: *Amar Nath v. Emperor* A.I.R. 1931 Lah 406 (Z7). It is obvious that the currency notes, etc. only form part of the Rs, 4000 currency notes which belonged to Ameena Ammal and stolen from her house at the time of her murder.

17. In the result, the learned Sessions Judge was fully justified in coming to the conclusion that the prosecution had affirmatively and satisfactorily proved that this accused 2 is guilty of the offence under Section 411, IPC I confirm the conviction. The sentence of three years' R. I. is by no means excessive. It is also confirmed.

The appeal is dismissed. In fact this accused 2 has been extremely fortunate in that the learned Sessions Judge in spite of other conjunctive circumstances did not draw also the inference of complicity in the murder which was open to him to draw in regard to the charge of murder as has been laid down in the following decisions : *Sanwat Khan v. State of Rajasthan* : AIR 1956 SC54 ; *Wasim Khan v. State of Uftar Pradesh* : 1956 CriLJ790 ; *Chinnappa Udayar v. State* 1956 MWN Cri 189 (Z10); *Velu v. State* R. T. No. 143 of 1956 (Mad) (Z11), decided by Somasundaram and Basheer Ahmed Sayeed, JJ. and *Komarasami alias Kasimuthan v. State* R. T. No. 26 of 1957 (Mad) (Z12), decided by myself and Ramaswami Gounder, J.

18. Before parting with this case I must refer to the contention put forward by the learned Counsel for accused 2 that in regard to the currency notes, they should not have been directed to be returned to the heirs of Ameena Ammal. In advancing this argument it is overlooked that this order is consequential to the finding that the prosecution has affirmatively and satisfactorily established that this amount formed part of Rs. 4000 loot constituting the motive for the offence of dastardly murder. This consequential order merits no interference.

19. The appeal is dismissed.

