

In Re: Peria Chelliah Nadar

In Re: Peria Chelliah Nadar

SooperKanoon Citation : sooperkanoon.com/808145

Court : Chennai

Decided On : Nov-17-1941

Reported in : AIR1942Mad450; (1942)1MLJ503

Appellant : In Re: Peria Chelliah Nadar

Judgement :

Happell, J.

1. The appellant has been convicted by the learned Additional Sessions Judge of Tinnevely of the murder of one Baliah Nadar on 13th of March last, at the village of Attankarai and has been sentenced to death.

2. The deceased Baliah Nadar was married to a woman named Chellammal. The evidence is that this woman was not faithful to him, and that she was on terms of intimacy with a certain Chinna Chelliah Nadar. The accused was this man's elder brother. On the 13th of March, Chellammal and P.W. 6 went in the evening to the river in the neighbourhood of the village for water. Chellammal put her pot down, crossed the river and did not return. P.W. 6 on going back to the village informed Baliah Nadar's father (P.W. 5) of this and P.W. 5 sent Baliah Nadar to search for her. Neither Baliah Nadar nor Chellammal returned and inquiries made by P.W. 5 that night had no result. The next morning he went and made a search in the neighbourhood of the river and found marks of blood near a pit by the side of a brick-kiln. He reported this to the Village Munsif and the Village Munsif sent a

report to the Police. Investigation of the case was started on the 15th and that afternoon the accused was arrested.. According to the evidence of the Sub-Inspector of Police, who arrested him and of the Village Munsif (P.W. 7) and two other witnesses (P. Ws. 11 and 12), the accused after his arrest said that he would show them where he had buried the body of Baliah Nadar, where he had hidden some pambadams (ear-rings) given to him by Chellammal and where he had hidden the aruval with which he had killed Baliah Nadar and the cloth which he was wearing when he killed him. On that, according to the evidence of these witnesses, he did show them the place where the body was hidden. He gave them the ear-rings and he showed them where the aruval?was hidden in his sister's garden and handed him the cloth which was hanging on a clothes' line in his own house.

3. The learned Sessions Judge did not believe that the body had in fact been discovered as a result of the information given by the accused and we have no doubt that in this opinion he was correct. The Sub-Inspector himself admitted in so many words that, owing to the smell, he was really aware where the body was as early as 12 o'clock that day although the accused was not arrested at the earliest until 3 o'clock in the afternoon. The evidence against the accused therefore, as far as his alleged statement was concerned, rested on the information which led to the recovery of the pampadams, the cloth and the aruval.

4. This, however, was not the whole of the evidence which was accepted by the learned Sessions Judge as admissible against the accused. At about midday on the 14th, Chellammal appeared at her uncle's house at the village of Mettupatti and told him what had happened. Her uncle P.W. 10, then took her to Attankarai where she had lived with the deceased and she then made the same statement to her father-in-law (P.W. 5). The Village Munsif was sent for and she made a statement to him which he recorded in writing. This statement was admitted as Ex. H and in it Chellammal stated that her husband on the evening of the 13th had found her on the other side of the river with the accused Peria Chelliah Nadar, that a quarrel had ensued between the accused and her husband, and that the accused had cut her husband in the abdomen with an aruval. Chellammal the same evening committed suicide. The learned Sessions Judge was of opinion that

her statement was admissible under Sections 32 and 35 of the Evidence Act. There can be no question that the statement was not admissible and the learned Public Prosecutor has not supported the view of the Sessions Judge. It is not admissible under Section 32, because the death of Chellammal did not come into question in the Sessions case, and it is not admissible under Section 35 because this statement recorded by the Village Munsif and attested by two witnesses is clearly not an entry in a public or official register or record within the meaning of Section 35 of the Evidence Act.

5. The learned Sessions Judge founded his conviction of the accused largely on the statement made by Chellammal which he admitted, and he has used the statement of the accused to the police rather to corroborate the statement of Chellammal than the statement of Chellammal to corroborate the statement made to the police. It is clear that, if the learned Additional Sessions Judge had not admitted the statement made by Chellammal he would not have convicted the accused. In our opinion, as the statement of Chellammal is not admissible, the conviction of the accused cannot safely be founded on the statements alleged to have been made by him to the Sub-Inspector of Police and the other witnesses which is the only evidence that connects him in any way with the death of Baliah Nadar. The evidence relating to the recovery of the pampadams is not relevant once the statement of Chellammal goes, since it is on her statement that the connection of the pampadams with the deceased rests. There remains the evidence that the cloth and the aruval were recovered on information given by the accused to the police and the other witnesses. It has to be noted that no record of the statement by the accused taken at the time and attested by the witnesses was filed in the Sessions Court. The witnesses merely gave evidence, each of them, of what the accused had said. It is true that there are no serious discrepancies in their evidence, but at the same time there is no check on its exact accuracy. Moreover the ground on which the information received from an accused person is admissible under Section 27 of the Evidence Act is that the fact discovered thereby is to some degree, which will vary with the circumstances of each case and the nature of the fact discovered, a guarantee of the truth of the information. In the present case the discovery of an aruval which was not blood-stained, and a cloth, blood-stained indeed but to what extent we do not know, from the accused's

own home does very little to guarantee either that the accused did make the statement alleged or that, if he did make it, it is true. The accused in his statement at the trial denied that the aruval or the cloth were his and stated that he knew nothing about the offence. The position, therefore, is in effect that the case against the accused rests on a retracted confession which is not materially corroborated. We do not think consequently that it is safe to convict the accused on his statement alone and the learned Public Prosecutor, agreeing that Chellammal's statement, is not admissible has not seriously maintained that the conviction can be upheld.

6. We, therefore, allow the appeal and set aside the conviction of the accused and direct that he be set at liberty.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com