In Re: Ramaswami

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SooperKanoon Citation : sooperkanoon.com/809337

Court : Chennai

Decided On : Nov-16-1937

Reported in : AIR1938Mad336

Appellant : In Re: Ramaswami

Judgement :

Burn, J.

1. The appellant has been convicted by the learned Sessions Judge of Anantapur for murdering a little boy on 18th February 1987 and has been sentermed to death. This is one of those sadly too frequent cases in which children are murdered for the sake of jewellery on them. There is no reason to distrust the evidence of the mother of the little boy (P.W. l) who says that on the night of 18th February her little boy ran out to play after taking his evening meal, wearing a pair of gold bangles and a pair of gold earrings When the little boy's corpse was found by the side of the donka leading from the village towards Dharmapuram, the jewels had been removed. The boy had been murdered apparently by dropping a large stone upon his head. Two blood, stained stones were found close by, one weighing about one and half maunds and the other quite a small one. There can be no doubt but that the child was murdered in this brutal fashion for the sake of the jewels which he was wearing.

2. The evidence against the appellant which the Judge has accepted is wholly of a circumstantial nature. The appellant is said to be a eunuch, who is a native apparently of Malabar; but the mother of the boy, (P.W. 1), says that he had been in the village of Vengannapalli in Gooty Taluq for the past 12 months. According to the evidence of P. Ws. 1, 2 and 3 the appellant was popular with the children of the village and that it was quite usual for them to play with him and to go hither and thither with him. P.W. 2 who lives about a furlong from the place where the body was found, said that she had seen the appellant and the little boy that night going in the direction of the place where the corpse was found. P. Ws. 3 and 4 said that sometime later they saw the appellant alone returning in the opposite direction. To all intents and purposes this is the whole of the evidence against the appellant. It was alleged by the village munsif, (P.W. 10) and another witness, (P.W. 11) that the appellant) whom the village munsif found tied up near the temple, admitted that he had committed the offence and promised to show where he had put the jewels. The village munsif says that after the appellant made this statement, he got the appellant released. He says, the appellant and the other witnesses laid him to a place near the house of Vadde Nagabusi. There the appellant played a trick upon the village munsif. He requested the village munsif to keep the other people at a distance, while he and the village munsif alone went further. The village munsif fell into the trap, went along with the appellant but the appellant after pretending to look here and there ran away and the village munsif was enable to catch him. The village munsif is corroborated, as we have mentioned by P.W. 11. But it is to be noticed that P.W. 11 is not a resident of Vengannapalli but of the village of Nemathabad, a hamlet of Gooty. No resident of the village speaks to this confession by the appellant and we think that the learned Sessions Judge was right in refusing to not upon his evidence of confession. It is curious that although the village Munsif found he appellant tied up when he got to the from pie which was after midnight, there is no evidence to inform us when the appellant was caught or where.

3. The learned Sessions Judge had relied to a great extent upon a sentence in the post-mortem certificate (Ex, B) to the affect that the Sub-Assistant Surgeon found ten ounces of undigested kora food In the stomach of the little boy. The evidence of the mother (P.W. I) is that she gave the little boy his evening meal and that he

ran out at once to play. The evidence of P.W. 2 would show that the appellant and the deceased were seen together very soon after that and the fact that the food was still undigested-the learned Sessions Judge thinks-is an indication that the murder must have taken place within a very short time afterwards. For this reason, he thinks, that it is incumbent upon the appellant to produce a satisfactory explanation or to submit to the drawing of the inevitable inference that he was concerned in the murder. We cannot think that this reasoning of the learned Sessions Judge is sound. the Sub-Assistant Surgeon, when he gave evidence, was not naked anything about the state of the food in the stomach of the little boy. The learned Sessions Judge was not justified m treating the post-mortem certificate (Ex. B) as evidence and in extracting the sentence about the undigested food and rallying upon that as if it were positive evidence in the case. The post-mortem certificate is not evidence. It could be property used by the Sub-Assistant Surgeon, when he was giving evidence, to refresh his memory and it could also be used as a record of what he observed at the time to corroborate, or perhaps to contradict, whatever ha might say in the witness box; but it cannot by itself be substantive evidence. It is clear that it would be unsafe to act upon an isolated statement of this kind in is, post-mortem certificate. If the Sub-Assistant Surgeon had brought out this fact in his deposition the appellant's advocate in she lower Court might have been able to cross-examine the Sub-Assistant Surgeon and to find out precisely what he meant by 'undigested' food and also to find out his opinion as to the time that had elapsed between the taking of the last meal and the death of the little boy. It is common experience that the expression 'undigested food' may mean food which has bean partially digested in the stomach but has not passed out of the stomach. We have had many cases in which doctors have given opinions that death must have taken place within a certain time after the taking of the last meal. But we do not think it is safe for a Sessions Judge without the guidance of the opinion of the doctor to take so decidedly a view that death must have taken place within a very short time of the eating of the last meal.

4. There was one other circumstance, which appeared in Ex. A, a statement made by the mother of the boy to the village munsif. That was that when she got to the temple in her search for the child, she saw the appellant and questioned him. She says ha replied 'Your son Narayanan is not hare.' The learned Public Prosecutor

has pointed out that if it were true that the appellant had bean seen in the company of the little boy vary shortly before, this conduct on his part shortly after the murder would be vary suspicious. For some reason which we do not know, this part of P.W. 1's statement to the village munsif was not brought out in the Sessions Court. In the Sessions Court she said that she saw the appellant at the temple but not that she spoke to him or that he spoke to her. The appellant has offered an explanation of the evidence of the Village Munsif in so far as it relates to his escape from the Village munsif. He says that it is quite true that he promised to show the place where the jewels were buried but that ha only did that because ha was tied to a post and was being beaten and he wanted to get an opportunity of escaping. There can be no doubt that this is a possible and in fact a plausible explanation.

5. There was another person accused along with the appellant, one Vankataramudu son of Vadde Nagabusi already mentioned. It is in the evidence of the police that accused 2 was arrested on information given by the appellant and that accused 2 when arrested had some blood spots on his clothes. But nothing more was discovered against him and the police did not think it worthwhile to include him in the charge sheet. He was committed for trial at the instance of the Sub-Magistrate, who thought it proper that he should be tried along with the appellant. The appellant in his petition of appeal from jail alleges that it was really accused 2 who committed the crime and that accused 2 has been protected by the village munsif and other people of the village, while he (the appellant) has been sacrificed as he is a poor, helpless stranger. It is not necessary to express any opinion with regard to the guilt of accused 2, but it is quite clear that be could not have been convicted upon the evidence, that was adduced in the case.

6. With regard to the appellant we think that the evidence does not lead to the necessary inference that he must have been concerned in the murder of the little boy Narayanan. As we have already said, the sole fact proved against him is that he was seen in the company of the child not far away from where the corpse was found sometime therefore the murder must have taken place. But there was nothing unusual in the fact that the little boy was with the appellant; that was a common occurrence. And as it is not possible to say that the appellant and the

child were seen together within a very short time of the murder, we do not think it safe in this case to infer that the appellant must have been concerned in the murder. There is undoubtedly cause for grave suspicion, but we think the evidence falls short of proof. We therefore allow this appeal and get aside the conviction for murder and the sentence of death and direct that the appellant be set at liberty forthwith.