

In Re: Kannammal

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Court : Chennai

Decided On : Jan-14-1925

Reported in : AIR1926Mad570

Appellant : In Re: Kannammal

Judgement :

Coutts-Trotter, C.J.

1. This is an unusual case not so much from the circumstances of the crime but from the walk in life of the accused. She is a widow some 29 years of age, who was undergoing a course of training to fit her to be a teacher in the Government Training School at Conjeevaram. She had six months further training to undergo before she became qualified to earn a salary as paid teacher. One of the pupils at the school was a little girl, Kamalakanni by name, and about 9 or 10 years old. In the view we take of this case, it does not matter what her exact age was. It is a short and terrible story. It is not necessary to dissect the evidence; the learned Judge has done it very carefully and the story that emerges is simply this : This woman decoyed this child away from the school, took her to Walajabad about ten miles off, had the ornaments with which the unfortunate child was bedecked taken off and it is practically undisputable that those ornaments were afterwards sold by her. So open and careless was she in her proceeding that she actually had two goldsmiths in succession to endeavour to remove the ornaments from the child's arms and legs. She herself does not dispute that at a later date she sold them and received the proceeds. The occurrence was on the night of the 15th of

September last. Of course, the child's parents made inquiries when they found she disappeared. People came forward to say that they had seen the child with a woman; some of them positively identified her as being the accused while others described her in a way that left no reasonable doubt that she was the accused. Indeed the accused herself does not deny it. The next morning the child's body was found floating in a tank some four miles from Walajabad. It was very much decomposed and the doctor who gave the post mortem certificate and gave evidence in Court declined to express any positive opinion as to what was the cause of death. We think that it is clear that the child died of asphyxia. What is not clear on the meagre materials supplied to us is whether the child was strangled before her body was put into the tank or whether she was thrown into the tank and died of drowning. From what one can ascertain from the accredited text books, Taylor and Lyons, it seems on the whole the balance of probability is that the child was dead when her body was put into the tank. We should like to say and think that notwithstanding the decomposition, extensive as it was in this case, that a more careful examination by the medical officer would probably have put us in a much better position to express an opinion one way or the other about this, and it is a matter which might possibly make some difference in the view that has to be taken of the degree of guilt of the accused.

2. The accused set up a story which is absolutely uncorroborated by any one of the numerous witnesses for the prosecution that, while she was a party to the taking of the child's ornaments and to the disposing of them, she was induced to do that by a man called Sessa Chetti and a woman called Tayaramma. She says that the former told her that the girl's father owed him money and that he was going to repay himself by this cavalier method of removing the child's ornaments and selling them and appropriating the proceeds in satisfaction of his debt. There is no sort of corroboration of that statement: no witness for the prosecution supports any of the facts on which it is supposed to be based. It is denied by Sessa Chetti and Tayarammal who were very properly brought before the learned Sessions Judge when that defence had been set up. We can only come to the conclusion that this woman is responsible for the murder of this child to hush up the robbery which she committed by taking her ornaments from her. The motive for the crime was obviously a desire to get money and it may very well be that this

unfortunate woman who was left a widow with three children and had not yet qualified herself for earning her livelihood in her new profession was in real straits for lack of funds. That is, we think, all that can be said in extenuation: she was a mother, she had little children of her own, she took somebody else's child and savagely murdered it for the sake of Rs. 250.

3. The sentence of the Court below and the conviction must be confirmed. We have pointed out the only circumstance in possible mitigation that can be pointed out and the case will be brought to the notice of Government. One is naturally reluctant to pass the extreme penalty of the law on a woman comparatively young who has been struggling to maintain a family, she herself being left a widow; but in this case the other circumstances weigh so heavily against her that we think that, if any leniency is to be extended to her, it cannot be extended by a Court of law, but must be left, if it is to be exercised at all, to the prerogative of mercy which is inherent in Government. The appeal will be dismissed and the sentence and conviction confirmed.

4. I should like to add a word on one matter which arose during the trial. By Section 342(1) of the Code of Criminal Procedure the committing Magistrate or the Court, at the trial, is entitled to put questions to the accused. Sir John Wallis, C.J., and myself have held in a decision which, so far we know, is unreversed, *Re-Abibulla Ravuthan* [1915] 39 Mad 770 that the object of that section is to give the opportunity to the accused, if he so desires, to tender any explanation he likes of his part in the case that is presented against him. Sub-section (2) of that section runs as follows:

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

5. In that state of things a Full Bench of this Court has held in *Varisai Rowther v. King-Emperor* A.I.R. 1923 Mad. 609, -- in that particular case it was in the interests of the accused although we cannot think otherwise than that it will more often be greatly to his detriment--that the provision in Section 342(1) of the Code that the Judge shall ask the accused what he desires to say is mandatory and not

discretionary.

6. There is no provision in the Code for the accused being warned of the consequences of the statement he makes. The main consequence, of course would be that the statement he makes must be given in evidence against him. We contrast with that the provision of 11 and 12 Vic. Ch 42, Section 18 which runs as follows:

After the examination of all the witnesses on the part of the prosecution of a person brought before any Justice or Justices of the Peace charged with any indictable offence, shall have been completed, the Justice of the Peace, or one of the Justice, before whom such examination shall have been completed as aforesaid, shall without requiring the attendance of the witnesses, read or cause to be read to the accused the depositions taken against him and shall say to him these words or words to the like effect: 'Having: heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so but whatever you say will be taken down in writing and may be given in evidence against you upon your trial' and whatever the prisoner shall then say in answer thereto shall be taken down in writing and read over to him, and shall be signed by the said Justice or Justices, and kept with the deposition of the witnesses, and shall be transmitted with them as hereinafter mentioned and afterwards upon the trial of the said accused person the same may, if necessary, be given in evidence against. him, without further proof thereof, unless it shall be proved that the Justice or Justices...purporting to sign the same did not in fact sign the same : provided always that the said Justice or Justices, before such accused person shall make any statement, shall state to him and give him, clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been holden out to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial notwithstanding such promise or threat.

7. The first thing we desire to observe is that the English Act says that the statement made by the prisoner in such circumstances may be given in evidence

against him. It is within the experience of all barristers who have practised in the English criminal Courts that the prosecution will always put in the statement of a man as part of their case when it helps him or amounts to a denial of the charge. But there are cases in which an accused person makes a foolish incriminatory statement, not understanding the position he is in, where prosecuting counsel, with that sense of fair play, which we think, we may say, invariably characterizes them, think it is in the interests of the man himself not to put in the statement. They always point out the statement to the presiding Judge and he understands why it is the prosecuting counsel does not think it fair to let the statement of the prisoner go before the jury. If the Judge thinks it ought to go in, he says so.

8. It seems to us that it would be a salutary amendment of the Indian Law if it were not compulsory to put in such a statement. If there were any danger of prosecutors unfairly keeping back a statement that helped the accused, the Judge is there to insist on its being put in. Further, speaking for ourselves, we think it is extremely desirable that some such form of caution as is prescribed by 11 and 12 Vic. Ch. 42 Section 18 should be introduced into the Code of Criminal Procedure. The form in which this woman was invited to make a statement by the committing Magistrate in this case was as follows:

You have heard all the statements of the prosecution witnesses; you have heard, read, all the records filed in Court on the side of the prosecution. What explanation do you offer for it.

9. That seems to us a most undesirable method of inviting the accused person to make a statement. He is not warned that, it will be usable in evidence against him: he is not warned that, if he does not wish, he need not offer any explanation whatever. We think it is extremely desirable that Magistrates should follow the practice of warning accused persons when they invite their explanation under Section 342 of the Code that they are not obliged to say anything unless they desire to. The object of the section is to give them an opportunity, if they so desire, to explain their conduct and further warn them that anything they say will be put in evidence against them at their trial. The Local Government will necessarily have this judgment before them when the question of confirmation comes up and they

may possibly consider it advisable to approach the Government of India to amend the law in this respect and bring it into conformity with the very careful provisions of the Indictable Offences Act intended to safeguard the liberty of the subject.

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