

In Re: Arumuga thevan and ors.

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Court : Chennai

Decided On : Nov-11-1929

Reported in : 129Ind.Cas.252; (1930)59MLJ876

Judge : Jackson, J.

Appellant : In Re: Arumuga thevan and ors.

Judgement :

Jackson, J.

1. The six appellants have been convicted on the charge that they rioted with the common object of hurting one Rani Sundararajan and also Mookan Servai and Kalimuthu Servai. The 1st and 4th appellants have also been convicted under Section 148, and the first under Section 326, and all the others under Sections 326 and 149

2. The learned Judge finds that the statement taken from Rani Sundararajan before he died, Ex. F, is a substantially true account of what occurred.

3. He says that he came to Madura from Tirupparankundram and found Mookan and Kalimuthu sitting in front of the he use of Nagayan, who joined them, and told them that his son's wife had left him and when his son went to get her back from her parents they called is accused No. 1, who protested against the son trying to get his wife from a he use of which accused No. 1 was the landlord. The son said

there was no need to ask his leaver and was beaten, Nagayan protested and was also beaten. Next morning he was beaten again and went he me.

4. Nagayan was telling this story to the others at about 3-30 P.M., when accused Nos. 1 and 4 to 7 came and asked why they were sitting there. Mookan and Sundararajan tried to preserve peace, but accused No. 1 and Sundararajan began to abuse each other, whereupon accused No. 5 beat him on the head, and accused No. 1 stabbed him with a spear, and accused No. 4 cut him with a chopper. Kalimuthu and Mookan picked up Sticks to rescue him, and they turned upon them.

5. From this account it would seem that the common object was to drive Nagayan out of the town because he supported his son in trying to get back his wife. It is not at all clear why accused No. 1 should be so violently interested in the quarrel merely because the girl's parents were his tenants; but in any case neither he nor the other accused seem to have any object to beat Sundararajan, Kalimuthu or Mookan until they quarrelled that afternoon. The learned Judge has never addressed his mind to this difficulty. In his 15th paragraph he reiterates his belief in Ex. F, and in his 17th he finds the accused guilty of rioting, but he, nowhere explains what riot he deduces from the evidence of Ex. F. It is certainly not the riot set forth in the charge, for if the accused were after Nagayan and suddenly came upon Sundararajan, Mookan and Kalimuthu it cannot be said that their common object was ever to hurt these three.

6. When a man who is dead has left a statement throwing light upon the cause of his death that statement is relevant evidence under Section 32 of the Indian Evidence Act, but it is not entitled to any peculiar credit. No doubt if a man gasps out his story soon after the occurrence it may be said that there was no time for him to fabricate or for his friends to suggest falsehood.

The tongues of dying man enforce attention like deep harmony; where words are scarce, they are seldom spent in vain; for they breathe truth that breathe their words in pain.'

7. But if, as in this case, the man is in bed in the hospital four days after the event, and a month before he dies, and makes a statement, that statement carries no more weight than if he made it in the witness-box, and rather less because he has never been cross-examined.

8. It is, therefore, incumbent upon the Court before it accepts the statement as true to see how far it is corroborated. Mookan so far from corroborating it says it was made by Sundararajan when he was off his head owing to fever. He says that he was sitting in front of his own house that afternoon, and heard an uproar coming from inside the house of Nagayan. He stepped into the road, saw all the accused there and asked them why they had come after beating Nagayan and his son in the morning. Then accused No. 1 gave him seven slaps, and the others beat him. Kalimuthu ran to his rescue and he too was beaten. Then Sundararajan came up and he was stabbed.

9. Nagayan says that he was standing outside a shop when the accused attacked him, and he ran inside the house and bolted the door; He looked out later and saw Sundararajan on the ground. He had not seen him before that day. Kalimuthu says that he ran up and saw Mookan being beaten, he tried to rescue him, got beaten himself, and then Sundararajan came and protested and was stabbed.

10. The learned Judge rather understates the divergency between the story in Ex. F and the story in the depositions, when he says that they differ to some extent. They are quite different. Probably it is a correct inference that Sundararajan and Mookan when they lay in the hospital never arranged to tell the same story; but that hardly proves that one story out of the two discrepant stories must be true. It merely proves that one of them at least is lying and they never troubled to conceal the fact, and if it is an understatement to say that there is some difference it is an overstatement as it is said in para. 15 that the evidence of Mookan and Kalimuthu largely corroborates Ex. F. The truth is that Ex. F is not corroborated at all, and since it is contradicted by the oral evidence, no conviction can be founded upon it. Nor can the judgment be supported by relying upon the oral evidence, because the trial Court has not believed it to be true. It finds that P.Ws. Nos. 8 and 9 changed the facts in order to safeguard themselves, and other alleged eye-

witnesses carry little weight.

11. Some attempt seems to have been made to convict the accused out of their own mouths. The interrogatories came perilously near to cross examination and accused No. 5 was made to admit a complaint of his to the Magistrate which was marked as a prosecution Ex. L and used against him as showing that he had never attempted to explain he is the prosecution witnesses came by their injuries. The learned Public Prosecutor very properly abstained from any reference to this exhibit.

12. To sum up, even the lower Court finds that there is no evidence for the common object stated in the charge. The only evidence of the common object upon which the conviction for rioting is founded is Ex. F, and that statement is both uncorroborated and contradicted. Therefore, the findings under Sections 148, 149 cannot possibly stand.

13. As for that under Section 326 no doubt the witnesses agree that accused No. 1 stabbed Sundararajan, but their stories are too discrepant and improbable. An outstanding difficulty which has never been cleared up is how accused No. 1 took a prominent part in the quarrel merely because one side happened to have rented his house.

14. The findings and sentences are cancelled, and appellants are acquitted.

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