

In Re: Dasi Viraya

In Re: Dasi Viraya

SooperKanoon Citation : sooperkanoon.com/813424

Court : Chennai

Decided On : Dec-01-1937

Reported in : AIR1938Mad490; 175Ind.Cas.422

Judge : Burn and ;Mockett, JJ.

Appellant : In Re: Dasi Viraya

Judgement :

Mockett, J.

1. The accused has been convicted and sentenced to death for the murder of his wife on July 28, 1937, at about 10 o'clock in the morning. At the time of murder, the deceased was not living with the accused but was living about 100 yards away in the hut of P.W. No. 1. She had left her husband and was living under P.W. No. 1's protection. In P.W. No. 1's hut was also living a little girl, (he daughter of the accused and the deceased (P.W. No. 2 in this case), who was a young child appearing to be about seven or eight years in the Sessions Court. Her evidence is that on that morning she was in P.W. No. 1's hut powdering chillies and her mother was washing clothes near the palmyra trees when her father, the accused, arrived, and cut the deceased with a knife. She states:

My father held my mother's tuft of hair and cut her neck. I was frightened that he would cut me also and hid myself behind a wall. Then I went to my grandfather's house and reported to him.

2. Then she describes how her father ran away after cutting her mother. She says that her father gave her mother two blows with the knife. But he gave many more blows than that. Altogether 15 wounds were found on the deceased; but it is enough to describe one of them, viz., wound No. 2 which was

an incised wound 4 inches by 1 1/2 inches by 1 inch; begins 1 inch below and 1 inch right of Pommel Adami and runs across the front of neck to the left. This runs parallel to injury No. 1, 1 inch below and ends 1 inch below middle of injury No. 1. The trachea is severed in front and connected posteriorly by 1/4 inch left carotid and left sterno mastoid are severed.

3. This wound alone would be enough to cause death. There were in all 15 wounds, many of which were of a grave nature. It is not unlikely that this little child after seeing her father cut her mother twice, hid herself away. However she went later to P.W. No. 3. Prosecution Witness No. 3 is the little girl's grandfather, the father of the deceased. He says that on that morning P.W. No. 2 came to him and said that her father had cut her mother's throat; and that he went to the house of P.W. No. 1 and saw the deceased, Pitchi lying dead in a pool of blood. Now P.W. No. 4 says that she heard P.W. No. 2 telling P.W. No. 3 that the accused had cut the deceased's throat and that she gave that information to P.W. No. 1 on her way to work. Prosecution. Witness No. 1 describes how he heard the news from P.W. No. 4 and how he returned to the village and found Pitchi lying dead in the vacant yard by his house. He thereupon went to the Village Munsif and gave the statement, Ex. A, which runs as follows:

Having taken my breakfast (cold rice), I left, this morning at 7 A.M. to do wet ploughing to the field of one Koduri Kotayya, son of Venkayya of Keunegantivaripalem, hamlet of Voleru village. At about 11 A.M., and while I was ploughing the wet field, one Anki, wife of Rebba Mantrigadu, came to me and reported that Dasi Sampson murdered my wife Pitchi by cutting her with a knife. I thereupon left ploughing and came and found her (Pitchi) lying dead in the yard north of the house with her throat cut. A seven year old daughter Rami told me that Sampson slew her with a knife and ran away.

4. This statement was made at about 12 noon on that day. Prosecution Witness No. 7 is the Sub-Assistant Surgeon who describes the wound to which reference has already been made. Now, the criticism that is made from the bar on behalf of the appellant against the case of the prosecution amounts to this, viz., that the primary and the most important evidence in the case is that of the young child and that it ought to be rejected on two grounds. The first ground for rejecting it is that it is unsworn evidence and the testimony of an unsworn person is not admissible in evidence. The answer to that is that this Court has held, and so have all the Courts in India, that in the case of an unsworn testimony of a young child, that evidence is admissible: *China Venkadu v. Emperor* 38 M. 550 : 22 Ind. Cas. 737 : A.I.R. 1914 Mad. 293 : 15 Cr. L.J. 161. Section 13, Oaths Act, expressly provides for cases in which the provisions of Sections 5 and 6 of that Act have not been carried out. The other point is that this evidence stands uncorroborated and that, it would be unsafe to act on the uncorroborated evidence of a young child. But it will be seen that this little girl, immediately after the occurrence, went and reported to the elders as to what had happened. And there is the additional corroboration, a very strong corroboration, viz., the confession made by the accused in which, in as simple words as possible, he said that he did murder this woman because she started abusing him and that his heart-burning was such that he did commit the murder. This statement is found in Ex. M. But the learned Counsel for the appellant urges that Ex. M, too, should be rejected because of the method of its recording as the provisions of Rule 85 of the Criminal Rules of Practice have not been strictly carried out.

5. A perusal of Ex. M shows that the Magistrate did satisfy himself that it was a voluntary confession. It is unfortunate that he recorded at the end of the confession that it was a voluntary one and did not at the beginning record in writing his reason for believing that the accused was prepared to make the statement voluntarily. If there is the slightest doubt whether the statement was voluntarily made, then this defect would be an important factor in favour of the accused and in favour of rejecting this confession. There has been no cross-examination of the Sub Magistrate addressed to this aspect of the case regarding the confession recorded by him. The Magistrate states in his evidence that the accused did not reply to any question except the one which he recorded. Exhibit M

suggests that it might have been split up into a number of questions but none evoked any answer from the accused until at the end he contented himself by making a complete confession. All that is relevant is that the Magistrate was satisfied that it was voluntarily made and that we should be satisfied that it was a voluntary one. There is no material whatever on record to suggest otherwise. It has already been held by a Bench of this Court (which we are content to follow), that omission to comply with the requisites of the Criminal Rules of Practice would not vitiate a confession provided Section 164, Criminal Procedure Code, is complied with; and that section has been complied with in this case. It is perfectly clear that the lower Court had no reason to come to any other conclusion than the one it came to. The conviction will be confirmed as also the sentence. It was a most ferocious attack on the deceased woman and the fact that she left her husband is no excuse for his murdering her in this manner. The appeal is dismissed.