

In Re: Karuppan Chetti and anr.

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Court : Chennai

Decided On : Apr-30-1940

Reported in : AIR1941Mad267

Appellant : In Re: Karuppan Chetti and anr.

Judgement :

Burn, J.

1. The appellants were accused 2 and 8 in S.C. No. 119 of 1940 in which the learned Additional Sessions Judge of Madura tried them and one Pethnasami Chetti (accused 1) on the charge that accused 2 and 3 had murdered one Chockalingam Chetti on 17th June 1939 and that accused 1 had abetted the commission of the murder by them. The learned Additional Sessions Judge considered that the evidence of abetment by accused 1 was insufficient and acquitted him, but accused 2 and 3, the learned Additional Sessions Judge, agreeing with, the assessors, found guilty of the offence of murder.

2. There is no doubt about the fact that Chockalingam Chetti was murdered on the night of 17th June 1939, at Bodinaickanur. He was stabbed in 24 places and his head was cut off. The case was undoubtedly one of murder. The chief evidence against the appellants consisted of confessions made by accused

3. He was arrested on 26th June in the house of a country doctor (P.W.

29) to whom he had gone for treatment of a wound on his leg. When the Circle Inspector saw him, accused 3 made a long confession to the Inspector which has been recorded in Ex. AA. The learned Additional Sessions Judge has only admitted in evidence under Section 27, Evidence Act, certain portions of this statement which in his opinion relate distinctly to important facts discovered in consequence of the information given by accused

3. Accused 3 said that he was prepared to show the weapon which had been used by himself and accused 2 in killing Chockalingam Chetti. He also said that he would show the place where the head had been buried separately from the trunk. He took, the police to a place about a furlong to the north of Bodipuram and there he produced from under a bush a dagger (M.O.

1) and an aruval (M.Order 2). According to his story the dagger had been used by himself and the aruval by accused

2. The evidence of the doctor who made the post-mortem examination showed that at least two kinds of weapons had been used, a stabbing instrument and an ordinary cutting instrument. Accused 3's story that M.Os. 1 and 2 were the weapons used may therefore be true but it was not confirmed by the results of chemical and serological examination. The chemical examiner was unable to find blood on the dagger (M.O. 1). He found blood on the aruval (M.O.

2) but it was in such a disintegrated condition that it was not possible to apply the test for human blood. Accused 3 also pointed out the place where he said the skull had been buried. Here again his information was not fully corroborated by the fact discovered for the skull was not found there. It was corroborated to some extent however because the police found a nasty smell and some human hair. A human skull was found a few days later about a furlong further off, and the lower jaw bones separated from it. The doctor was able to find that the jaw bones fitted the skull but he was not able to say that the skull was the skull of the person to whom the trunk had belonged.

3. Accused 3 was taken before the Sub-Magistrate on 28th. On 1st July he made a long and detailed confession to the Sub-Magistrate of Tirumangalam which is EX.

J. The Sub-Magistrate took all the possible precautions to ensure that he should not make a confession of any kind unless he really wanted to do so and the Sub-Magistrate was satisfied that he was making a statement voluntarily. Accused 3 persisted in confessing throughout the proceedings in the Court of the Magistrate who held the preliminary enquiry. 'When he was questioned on 30th September 1939, more than three months after the offence, he again repeated his confession and in fact added details which he had not mentioned before. The Sub-Magistrate decided to commit the three accused for trial on 4th October and even on that date when accused 3 was asked if he had any witnesses to be examined in the Sessions Court he said that he had none, but he did not disown his confessions. This is somewhat important because the plea of learned Counsel for accused 3 is that his confessions ought to be held to be irrelevant as having been made under inducement. It was alleged that the Inspector of Police had induced him to confess by promising that he should be taken as an approver.

4. If the confessions of accused 3 are true, there is no doubt about his participation in the murder of Chokkalingam Chetti for he says that he stabbed him in several places. We have been asked to say that the confessions cannot be relied upon because they do not tally with all the evidence that has been given by the prosecution witnesses and because they are not identical. There are slight differences between the confessions made on 1st July and on 30th September. We do not think, however, that these divergences between the two confessions or the omissions from the confessions of facts spoken to by the prosecution witnesses are sufficient reasons for rejecting the confessions. The allegation that the Police Inspector induced accused 3 to confess by promising to take him as an approver cannot be believed. It is clear, we think, that these confessions were made voluntarily by accused 3 and that, so far as concerns his participation in the murder, they are true. They are rather strongly corroborated by the discovery on information given by him of the two weapons and of the place where something dead had been buried. The confessions are strongly corroborated by the evidence given by three witnesses, P.Ws. 27, 28 and 29. As already stated, accused 3 was arrested in the house of P.W. 29 who is a country physician. Accused 3 had been taken to that house by his relations P.W. 27 and by P.W. 28. All these three witnesses said that when he was asked to explain the wound on his legs, accused

3 admitted that he and accused 2 at the instigation of accused 1 had killed a Chetti in Bodinaickanur. The assessors and the learned Sessions Judge, we think, were undoubtedly right in holding that accused 3 was guilty of the offence of murder. We confirm his conviction for murder and also the sentence of death and dismiss his appeal.

5. The case of accused 2 is quite different. The evidence against him was that of several witnesses who said that, on three or four days before this murder was committed they had seen him in company with accused 3 in Bodinaickanur. Accused 3 belongs to Mallapuram which is a long way from Bodinaickanur. There was evidence also given by P.W. 26 that on the night of 17th June, accused 2 went to Bodipuram along with accused 3 and both of them entered the house of accused

2. The evidence of P.W. 26 was accepted by the learned Sessions Judge. Learned Counsel for accused 2 has criticised the evidence of P.W. 26 rather severely because he was unable to explain consistently how he happened to get up and come out of doors in the middle of the night and see accused 2 and

3. In one place he said that he thought somebody was knocking at the door of the house in which he was sleeping. But in the Sessions Court he says that he got up and came out because he heard somebody knocking at the door of the house of accused

2. The learned Sessions Judge was apparently favourably impressed by the demeanour of this witness and we find it difficult to reject his evidence. Besides this, the only other item of evidence against accused 2 was given by a police foot-print expert. In the confession of accused 3 before the Sub-Magistrate on 1st July it was stated that, after committing the murder, accused 3 and 2 ran away in a north easterly direction and passed over some clay bricks which had been laid to dry. When these bricks were examined, marks of human feet were found on them. The foot-print expert took specimen prints from the feet of accused 2 and 3 in clay which was as nearly as possible of the same texture as that of the bricks found near the brick kiln. Having compared these test prints with the prints found on the bricks near the kiln, the expert said that in his opinion the foot-prints had been

made by accused 2 and

3. We have examined the prints ourselves and find it very difficult to express any opinion.

6. It is quite conceivable that the eye of the expert can see a good deal more in matters of this kind than an untrained eye. But it has to be remembered that the brick kiln where these foot prints were found is about a quarter of a mile away from the place where Chockalingam Chetti was murdered. The positive evidence therefore even if it is all accepted, is simply that before the murder the 2nd accused was in the company of the third; immediately after the murder, or very shortly after the murder, he was in company with accused 3 and his foot-prints have been found alongside the foot-prints of accused 3 on some soft bricks about a quarter of a mile away from the scene of the crime. On these facts learned Counsel for accused 2 asks us to say that accused 2 cannot be held guilty of the murder of Chockalingam Chetti. We think that this contention is well founded. Accused 3 implicated accused 2 in the crime in his confessions and if accused 3's confessions are true, accused 2 took in fact a leading part in the killing of Chockalingam Chetti. But the confessions of accused 3, as has frequently been held, are of less evidentiary value than the testimony of an accomplice because the man in the dock cannot be cross-examined. They can only be taken into consideration under Section 30, Evidence Act, along with such other evidence as there may be. This has been generally interpreted to mean that confessions like these given by accused 3 in this case may help the Court to decide whether the other evidence is or is not credible. It cannot however supply the place of positive evidence regarding the commission of the crime. In the present case, for instance, if we were in doubt as to the credibility of the evidence given by P.W 20, that doubt might be resolved by taking the confessions of accused 3 into consideration. But since the rest of the evidence does not show that accused 2 took part in the crime the confessions of accused 3 cannot be used to supplement it and to furnish the sole evidence of the actual murder. The circumstances proved against accused 2 by the witnesses to whom we have referred, do not in our opinion lead inevitably to the inference that he took part in the murder of Chockalingam Chetti. For these reasons, we set aside the conviction of accused 2 and the sentence of death and

direct that he be set at liberty.

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