

**In Re: Singampilli Yerranna and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/813923](http://sooperkanoon.com/813923)

**Court :** Chennai

**Decided On :** Jul-18-1940

**Reported in :** AIR1941Mad306

**Appellant :** In Re: Singampilli Yerranna and ors.

**Judgement :**

**Mockett, J.**

1. The four appellants and one Killadi Dali Naidu who was accused 5 before the Sessions Court were charged in the case of accused 2, 3 and 4 with the murder of one Sriramulu on 1st November 1939; accused 1 was further charged with abetment of the murder by accused 2, 3 and 4, at the place of the murder, and accused 5 with abetment of accused 2 by waiting near by presumably with the object of co-operating. Accused 1 and 2 were further charged with dishonest misappropriation of property of the deceased. Accused 1 is the wife of the deceased and there can be little doubt that - to put it no higher - the married life of accused 1 and the deceased was not happy. The father of Sriramulu deposes that the deceased and his wife had not slept together after their marriage until actually the night of the occurrence. It is not necessary to investigate the relations between these two further than that. The prosecution relied on the ill-feeling alleged to exist between them as being at least the motive for the murder owing to the part said to have been taken in the murder by accused 1. Accused 3 and 4 are the brothers of accused 1. Accused 2 is a farm servant employed by a person who did not give

evidence in this case. The conviction of these persons has rested almost entirely on a statement made by accused 2 to the police which statement the learned Sessions Judge held admissible as coming within the provisions of Section 27, Evidence Act. That statement combined with other evidence in the case satisfied the learned Sessions Judge of the guilt of accused 1 to 4. It is convenient, however to observe here that for reasons which will later appear, if that statement should be inadmissible, there is virtually no evidence whatever against accused 1, 3 and 4. Naturally, the position of accused 2 will be different because apart from the statement, his actions accompanying that statement may be very relevant in considering whether the evidence as a whole is sufficient to establish the case against him.

2. Now the story is easy to relate because it depends on one or two witnesses and one or two facts. The learned Sessions Judge has, set out the history of the case fully. On the night of 1st November 1939 there was a quarrel between accused 1 and the deceased because accused 1 shut the deceased's room and it is stated that the deceased slapped his wife. On the night when he was last seen, i.e., on the night of 1st November 1939 the deceased was wearing ear-rings M.O. 2 in this case. On that night he went out and apparently went out for the purpose which will later appear of getting leaves for the purpose of treating the mother of accused 8 who suffered from boils. That at least is said to be the reason why he went out although the real reason may never be satisfactorily proved. He went out and never returned. All that is known of his movements appears from the evidence of P.Ws. 7, 8 and 10 in this case. P.W. 7 states that he saw accused 1, 2, 3 and 4 and the deceased going towards the Golukonda road which is apparently in the north of the plan some time after midnight. He was quite near to them and claims to be able to identify them. Later, this witness communicated this fact to P.Ws. 4 and 5, because it came to his knowledge that the deceased had met a violent death. In fact he was told that accused 1 to 4 had murdered him. P.W. 8 had been to a festival and was returning to his village which is Pappuchettipalem. He says that at a point identified by him on the plan, he sat down for the purpose of easing himself. One Pothirazu was sitting near. This witness (P.W. 8) almost saw four men and a woman passing near-by and one of the men called out 'Sriramulu, come quickly.' The man replied, 'I am coming.' Now this witness knows the

deceased Sriramulu and he was the man who was there and he asked him where he was going and Sriramulu replied he was going to get Gatcha leaves as a relation of his wanted them. The witness says that he spoke to Sriramulu and he knew his wife but he did not know the four people who were with Sriramulu.

3. The next who knows of the movements of the deceased was one P.W. 10. P.W. 10 had also gone to the festival and he was driving home with his bulls late at night and coming to the main road, according to him, the bulls turned to go as they were accustomed to do towards the paddy fields whereas their owner (P.W. 10) wanted them to go in the opposite direction. It was necessary therefore for him to dismount from the bandy and turn the bulls round. He says he saw the deceased, accused 1 and 2 and the deceased's two brothers-in-law, that is to say, accused 3 and 4, near the culvert. He asked the deceased what they were doing there. The deceased replied they were going to get Gateha leaves for his mother-in-law. The witness got on to his bandy and saying - as no doubt correctly translated by the learned Sessions Judge - 'Very well, you get your leaves. I am going off' and he went away to Pappanapeta returning to Jagampeta on the following Saturday. He there heard of the death of Sriramulu and reported in the village what he had seen. He identified accused 3 and 4 before the Tahsildar. That is the evidence as regards the movements of the deceased.

4. The deceased was found on the 3rd in a watercourse near where he had been seen by the witnesses. His head was under water but the water was not deep enough to cover the body. A post-mortem was held and the medical officer (P.W. 1) was unable to say how the deceased met his death because of the advanced stage of decomposition. He could not find signs of drowning and he found no signs of violence. It was not possible for him to say that the lobes of the ears which were missing had disappeared naturally or had been turned out. It is important because certain ear-rings (M.Os. 2) in this case were identified as having been worn on the ears of the deceased. But some light is thrown - if it is to be accepted - by a statement made by accused 2 to P.W. 5. P.W. 5 is a cousin of the deceased. He heard of Sriramulu being missing and he looked for him. He states that he questioned accused 2 as he and accused 1 were on very friendly terms. Accused told him a long and detailed story about the death of the deceased. He said that

after the festival he went and slept and that the deceased had waken him up and asked him to follow him as his brothers-in-law were waiting under a peepal tree; that he and the deceased went to the peepal tree and there saw accused 1 and accused 3 and 4. Accused 3 asked him (accused 2) to show him where he could get a Gatcha leaf as his mother was ill. All of them, i.e., the deceased, accused 2 himself, accused 3 and 1 then proceeded to the road where they found accused 5 sitting on a culvert holding a cycle. Accused 3, 4 and 5 talked together. Then accused 5 went with them for some distance and stopped. He, i.e., accused 2, accused 1, 3 and 4 then took the deceased to Dara Gedda which is the watercourse and there killed him after striking him. Accused 2, 1, 3 and 4 after killing Sriramulu got on to the road and met accused 5 there. Then accused 3, 4 and 5 went along the road which leads to Mallampeta, while accused 2 and 1 returned to Jagampeta. When asked by P.W. 5 why he had killed Sriramulu accused 2 replied that accused 5 had promised to give him Rs. 50.

5. It will be observed that that statement implicates the other accused but it would naturally require the strongest independent evidence if any reliance can be placed upon it at all. Under Section 30, Evidence Act, such a confession can be taken into consideration; it is not evidence against the other accused. A statement on which the prosecution rely under Section 27 was made by this witness in the presence of P.Ws. U and 15 and P.W. 20, the Sub-Inspector. According to the Sub-Inspector of Police, a statement (EX. B) was made, part of which has been admitted in evidence by the learned Sessions Judge. That statement describes the murder of the deceased and the part played in it by the other accused. But there is no doubt from the evidence that what happened was the following. The accused made this statement and almost simultaneously - if not actually simultaneously - produced M. Order 2, the two ear-rings. That that is so is quite clear from the evidence of P.Ws. 14 and 15 who witnessed (EX.E), P.W. 14 states:

Accused 2 made a statement before the Sub-Inspector. It was reduced to writing. I signed it. It is Ex. E. Accused 2 then took the ear-rings, M.O. 2, from his waist cloth and handed them over to the Sub-Inspector.

6. P.W. 15 stated:

He made a statement. It was written down, I signed it. Ex. E is that statement. He handed over the jewels to the Sub-Inspector taking them from his waist cloth.

7. The Sub-Inspector who, we feel, was conscious of the difficulty surrounding the admissibility of the statement, stated before the lower Court : 'I recovered the ear-rings from accused 2 as a result of the statement which he made.' No doubt, bearing in mind the precise wording of Section 27, Evidence Act, which provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The learned Judge has considered this aspect but we think that he has overlooked the actual facts. We are satisfied that these ear-rings were not discovered in consequence of any information given by accused 2. They were discovered by accused 2 himself combined with a statement. They were not found by the police upon him after he made this statement which is the nearest approach to a compliance with this section which might be possible under the circumstances before us. This topic is dealt with in the latest edition of Amir Ali's Evidence Act at p. 282 and this Court has on numerous occasions distinguished between cases where a discovery is made in consequence of information given and a disclosure by an accused accompanying a statement. In this particular case, we are quite satisfied that the statement is inadmissible - is not admissible under Section 27, Evidence Act, and should not have been allowed to appear on the record. But, quite apart from this question, it is obvious that the convictions of accused 1, 3 and 4 cannot stand. Even if it could be taken into account it is obvious that there is virtually no adequate evidence on which a conviction could be based. Had accused 2 been examined as an approver, his evidence would have required corroboration implicating the other accused in material particulars. There is no doubt evidence that accused 1, 3 and 4 were in the deceased's company shortly before his death but the only statement that they took part in the murder comes from accused 2 who, be it remembered, was soon after in possession of the deceased's property. Moreover, owing to the condition of the body, it is not even possible to infer that more than one hand was responsible for the deceased's death. Their presence is no doubt suspicious but suspicion is not enough. Consequently, their convictions

must be set aside and they will be set at liberty.

8. But the position with regard to accused 2 is different. We have his association on the night in question with the deceased clearly proved. There is no reason to disbelieve the evidence of P.Ws. 7, 8 and 10. Neither do we disbelieve the evidence of P.W. 5. We consider that the confession made to P.W. 5 by accused 2 was made as stated. The conduct of P.W. 5 and P.W. 4 immediately after accused 2 made his confession is consistent with the fact : vide Ex. C. There is furthermore the all-important fact that, as we believe, the accused did produce from his person, on 3rd November, that is to say, within two days of the death of the deceased his articles of jewellery. His explanation of his possession of these articles was not considered satisfactory by the trial Judge, with which view we agree. There is not the slightest ground in this case for doubting that the deceased met his death by violence and that accused 2 took part in that violence. No one suggests that the deceased was not a healthy man. Accused 2 told P.W. 5 that he assisted to murder him for a reward of Rs. 50 and we are satisfied - corroborated by other evidence - that he at least is guilty. Consequently, we see no reason to interfere with the conviction of accused 2. His conviction for murder and the sentence of death are confirmed. It may be that accused 1, 3 and 4 have been fortunate, but a Court can only act upon evidence as it affects the individual. A somewhat unusual procedure was followed in this case - a case of murder - charging accused 1 and 2 with misappropriation of articles of the deceased (Section 404). In a case of murder, it is not a desirable procedure and one not within the experience of this Court. In any case, there is no evidence of misappropriation and these convictions are also set aside in the case of accused 1 and 2.