

In Re: Kaliaperumal

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Court : Chennai

Decided On : Jun-17-1954

Reported in : AIR1954Mad1088; (1954)IIMLJ673

Judge : Rajagopalan and ;Ramaswami Goundar, JJ.

Acts : [Evidence Act, 1872](#) - Sections 101 to 103 and 114; [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 302; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 236

Appeal No. : Ref. Trial No. 49 of 1954 and Criminal App. No. 250 of 1954

Appellant : In Re: Kaliaperumal

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : M. Ranganatha Sastri and ;M.V. Kapali Sastri, Advs.

Judgement :

Rajagopalan, J.

1. The accused was charged under Section 302 I. P. C. with having murdered Viswalingam, a boy aged about 13, on 21-12-1953 by drowning Viswalingam in Vari Voikkal, an irrigation channel with water about 3 feet deep in Vellamperambur to rob Viswalingam of the petty jewels he wore then, two rings, M. Os. 1 and 2 and a pair of ear-rings M. Os. 3 and 3 (a). The learned Sessions Judge convicted the

accused under Section 302, I. P. C. and sentenced him to death subject to the confirmation of that sentence by this court.

2. In the absence of direct evidence to prove that it was the accused that had drowned Viswalingam in the channel, the prosecution relied on circumstantial evidence, and also on an extra-judicial confession the accused was alleged to have made to P. Ws. 1, 3 and 8 in the village on the night of 22-12-1953 before the occurrence was reported by P. W. 1 to the karnam, P. W. 9.

3. The learned Sessions Judge, however, declined to take into consideration this extra judicial confession sworn to by P. Ws. 1, 3 and 8 and also embodied in Ex. P. 1 mainly on the ground, that it had not been satisfactorily proved that the confession was voluntary. No doubt it was on the information given by the accused that the dead body was later found in the channel and M. Os. 1, 2, 3 and 3 (a) were recovered. But the more limited question is whether, whatever the accused might have told P. Ws. 1, 3 and 8 among others, that statement is legally admissible in evidence against him.

The learned Public Prosecutor contended that the learned Sessions Judge should not have applied the same standards which would have been properly applicable had the questioning been by the police; but whether, what are commonly known as 'third degree methods' are alleged to have been used by the police or by others, the real question for determination is whether a confession on which the prosecution relies is proved to have been voluntary, P. Ws. 1, 3 and 8 admitted that it was after persistent questioning from about 6 p. m. in the night till about 3 a. m. during the whole of which period the accused had to go without food and sleep, that the accused finally admitted that he along with two others, who were subsequently examined as C. Ws. 1 and 2, drowned the boy, and that it was he that disposed of the jewels. Apart from the fact that the learned Judge rightly held that the confession was not proved to have been wholly voluntary, the learned Judge also pointed out that even the precise scope of the statement said to have been made by the accused in the village that night was not proved.

Whether the accused admitted that he himself participated in the murder or whether he was one of the three, one or more of whom committed the murder,

could not be gathered even from the statements by P. Ws. 1, 3 and 8, nor from what was recorded in Ex. P. 1. It is not the case of the prosecution that all the three persons murdered Viswalingam or that whoever might have actually drowned the boy, all the three were constructively liable for the murder under Section 34 read with Section 302 I. P. C. But none of these questions really arises for further discussion, because we agree with the learned Sessions Judge in holding as legally inadmissible the statement said to have been made by the accused to P. Ws. 1, 3 and 8 in the village.

4. Before we consider the circumstantial evidence on which the prosecution relied to prove the charge against the accused, we have to consider the question, whether it was proved beyond all reasonable doubt that the death of Viswalingam was due to homicidal violence. (After discussion of the medical evidence His Lordship proceeded.) On the evidence on record, principally the information furnished by the accused himself during the preliminary enquiry -- though he went back upon that during the trial in the Sessions Court -- the learned Judge, in our opinion rightly found that the death of Viswalingam was due to homicidal violence. It might be that in throwing the boy into the water the assailant intended Viswalingam to drown; but if meanwhile, laryngeal spasm made the intake of water impossible, and the laryngeal spasm itself directly resulting from the act of the assailant brought about the death of the deceased, the assailant is as guilty under Section 302 as he would have been had the boy been eventually drowned.

5. The next question is, was it the accused that threw the boy into the water with intent to cause his death? As we pointed out before, it was only on circumstantial evidence that this question has to be decided. The boy was out in the fields the whole of that day tending a goat. P. W. 15 swore he saw the accused in the fields in the company of the deceased at about 2 p.m. P. Ws. 13 and 14, two Harijan women, deposed that at about 4 p.m. they found Viswalingam in the company of the accused. There was a quarrel which was specified. That P. Ws. 13 and 14 saw Viswalingam in the company of the accused was also admitted by the accused all through. The case for the prosecution, it should be remembered, was that it was about half an hour after that that Viswalingam should have died. Though the medical examination of the body could not furnish precise data for fixing the hour

of death, that Viswalingam died at about that hour does not appear to admit of any doubt. Then at about 5 p.m. the same day the accused pledged M. O. 1 with P. W. 10 and deposited M. Os. 2, 3 and 3 (a) with P. W. 11. That the deceased Viswalingam had these jewels on his person when he left his house that morning was spoken to by his parents, P. Ws. 3 and 4, and by his brother, P. W. 1. That these jewels were on the body of Viswalingam at the time of his death was not really challenged by the accused. It was on this evidence i.e., the recovery of the jewels obviously stolen from the body of Viswalingam after he had been done to death, that the prosecution relied to prove that it was the accused that committed both the murder and effected the disposal of the property on the body of the deceased. Where murder and robbery of the jewels on the deceased person are proved to have been integral parts of the same transaction, the presumption that can be drawn from the possession of property which was on the deceased person may, consistent with all the facts proved in the case, be that the person to whom such possession was traced not only committed the theft of those jewels but also committed the murder which formed part of the same transaction as theft. But before any such presumption can be drawn, the primary thing to be proved is that the accused had no satisfactory explanation to offer for his possession of such jewels.

In this case the accused all along persisted that after the murder of Viswalingam the jewels were handed over to him by Muthuswami to be disposed of. That was what the accused claimed even during the preliminary enquiry. No such specific statement was ascribed to him by P. Ws. 1, 3 and 8. But It was on what the accused told P. Ws. 1, 3 and 8 that Ex. P. 1 was drafted, and in Ex. P. 1 itself the accused alleged the participation of C. Ws. 1 and 2. For what it was worth that was the explanation that the accused offered, that the jewels M. Os. 1, 2, 3 and 3-(a) which were certainly proved to have been removed from the dead body of Viswalingam, were given to him by C. W. 1, and that the accused pledged M. O. 1 with P. W. 10 and deposited M. Os. 2, 3 and 3(a) with P. W. 11. In deciding the question, whether that amounted to a satisfactory explanation or not, as a preliminary to drawing the presumption that the accused committed both the theft and the murder of Viswalingam, we have to observe that the burden of proving the truth of that ex-planation affirmatively did not lie on the accused. The burden still

rested on the prosecution to prove that the explanation was not true, if it was on the falsity of that explanation that the prosecution relied to invite the Court to hold that the possession had not been satisfactorily accounted for.

In this case the prosecution never even made any attempt to shoulder that burden. It was after the evidence of the prosecution was closed that the learned Sessions Judge himself directed the examination of C. Ws. 1 and 2 as court witnesses. The investigating officer did not even explain whether he had checked up the activities of C. Ws. 1 and 2 that day, to verify whether it could be proved beyond all possible doubt that they had not participated in the murder of Viswalingam. When an accused person gives an explanation, and when the duty of the prosecution is to show that it is not a satisfactory explanation because it is false, what exactly is the scope of the evidence the prosecution has to offer to convince the court that it is not a satisfactory explanation? It is impossible to lay down any test of universal application. The scope of the evidence on which the court could come to a conclusion that the explanation was not satisfactory, must depend upon the circumstances of each case. And as we have pointed out before, in this case the prosecution made no attempt at all to prove that the explanation was not satisfactory; and even after the examination of C. Ws. 1 and 2 it could not be said that the explanation furnished by the accused was false. Therefore the position is that there was an explanation and the falsity of it was never established. Under such circumstances it is rather difficult to presume that the accused not only removed the jewels from the body of Viswalingam but that he also committed the murder of Viswalingam preparatory to removing the jewels.

6. We therefore set aside the conviction of the accused under Section 302, I. P. C. But on the proved and admitted possession of M. Os. 1, 2, 3 and 3(a) immediately after Viswalingam had met with his death by homicidal violence, and the admitted disposal of these properties by the accused himself, we hold that the accused can be convicted under Section 201, I. P. C. despite the fact, that no specific charge was framed under Section 201, I. P. C, As pointed out by Horwill J. in -- 'Nagan-v. Emperor', 1937 MWN Cri 104 (A), the disposal of the properties did certainly result in screening whoever had been responsible for the murder; and if the explanation of the accused was true, the murderer was C. W. 1. When that was the definite

result of the disposal of the property. It is only reasonable to presume an intention to screen the offender to satisfy the requirements of Section 201, I. P. C. Every person is presumed to intend the natural consequences of his act. We convict the accused under Section 201, I. P. C. and sentence him to rigorous imprisonment for a period of three years.

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