

In Re: Kandasami Solagar

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SooperKanoon Citation : sooperkanoon.com/814623

Court : Chennai

Decided On : Sep-03-1941

Reported in : AIR1942Mad213

Appellant : In Re: Kandasami Solagar

Judgement :

Horwill, J.

1. The appellant has been convicted by the Sessions Judge of West Tanjore of an offence punishable under Section 304, part 2, Penal Code and sentenced to rigorous imprisonment for four years. The deceased was an old lady of 55 years of age and sho, like her son P.W. 8 and his brother, were farm servants of the accused. On the day of offence, P.W. 8 and his mother came to the field of the accused without the brother of P.W. 8 and they were at once taken to task by the accused for not bringing him. P.W. 8 gave an excuse which obviously did not satisfy the accused; and so the accused attempted to beat him. Fortunately for P.W. 8, he was able to run away and received a mere glancing blow on the back which did not cause any injury. The deceased saw that the accused was attempting to strike her son and so she intervened on his behalf and scolded the accused for attacking her son. Unfortunately for her, the accused was very irritable because he had been beaten just before by P.W.S. 5 and 11 and others. Being in a bad temper and irritated by her interference, he raised a stout ferruled stick which he had in his hand and gave her such a severe blow on the head as to cause her

death. This is spoken to not only by P.W. 8, but by P.Ws. 9 and 10, who were working in the neighbourhood.

2. As soon as his mother had fallen to the ground, P.W. 8 went to a village three miles away to inform his brother. The offence took place at about 10 o'clock; but by the time he had brought back his brother and they had together gone to the village munsif's house one and half mile away and found him absent and then traced him to the scene of offence, it was 5-30 P.M. The village Magistrate (P.W. 12) had gone to the scene of offence on the information of D.W. 1, the brother of the accused and had taken a statement from the accused himself, who had said that a number of persons (seven in number)-including P.Ws. 5 to 7 and 11-had attacked him and those working for him and had killed the deceased.

3. Most of the remaining prosecution witnesses speak to the incident which is referred to in the statement of the accused and which, if the prosecution story is true, is entirely irrelevant; because the incident in which the deceased met with her death had absolutely no connexion with what had happened before. The prosecution story as to the earlier incident is that P.Ws. 5 and 11, who were in turn married to the niece of the accused and had paid the accused a bride's price, had subsequently been discarded in favour of another man, but the bride's price had not been returned. On the day in question, they went to the field where the accused was harvesting the crops and said that they would not allow the harvest to proceed unless the Rs. 50 which had been paid by them were returned. During the subsequent disturbance, P.Ws. 5 and 11 received some blows but no serious injuries, while the accused had received a few cuts and other injuries. D.W. 1, the brother of the accused, had two contusions and D.W. 10, the son of the accused, also received an injury. P.Ws. 5 to 7 and 9 to 11 say that after this disturbance most of the witnesses went away. P.Ws. 9 and 10 returned to their fields, which adjoin the field in which this offence occurred. It was only after the fight was over, they say, that P.W. 8 and the deceased came on the scene.

4. One's first impulse is to suspect that there were not two incidents, separated by 20 minutes to three-fourth hour, but one incident, the fight in which so many persons were injured. It seems more plausible that the deceased met her death

while she and P.W. 8 were taking their master's part and received her injuries at the hands of P.W. 5 or P.W. 11 or one of their friends. That suspicion receives confirmation from the fact that the accused remained at the scene of offence and implicated P.Ws. 5 and 11 and their pangalies within an hour and a half of the commission of the offence. Further, it is pointed out that the statement which P.W. 8 made was as late as 5-30 P.M. and even then was rather vague and omitted many details given in the Sessions Court. However, there are serious difficulties in accepting this story of the accused, despite first impressions that there was something in it. It could not have been the case that P.Ws. 5 and 11 and others came and deliberately attacked the deceased. She was an old woman and she herself could have taken no part in the affray. It is suggested by the learned counsel for the accused that some blow intended for some male conspirator of the accused may have fallen on her; but the nature of the injuries makes that view impossible. She received not merely one fatal blow but three substantial blows, each of which caused a severe injury. Her right temporal bone was broken into pieces, in addition to that she had a contused puncture wound on her head and an injury to her arm, which shows that there was a deliberate attack made on her. This does not fit in very well with the accused's account of what happened that day in his field. The injuries are however easily explicable on the basis of the prosecution story; for the accused, having become angry on account of the incident 20 to 45 minutes earlier, was ready to vent his spleen on the deceased because she intervened to prevent him from beating P.W. 8.

5. Then, the evidence of the Village Magistrate is fatal to the accused's case. D.W. 1 came to him at about 11-30 A.M. and told him that the villagers were joining together and were going to beat the accused and that the latter had asked him to bring the Village Magistrate before they did so. This is consonant with the prosecution case that there had been a preliminary affray; for this messenger was sent to P.W. 12 because the accused apprehended that P.Ws. 5 and 11 would return in force with their pangalies and inflict a further beating. If the deceased had really been killed in the earlier fighting, D.W. 1 would certainly have told P.W. 12 so. It is argued that P.W. 12 is not completely trustworthy because he admits in cross-examination that he is related to P.Ws. 5 and 11 and others. Unfortunately, the prosecution did not ask P.W. 12 what exactly the relationship was or whether

he was not also related to the accused; but it is in evidence that P.ws. 5 and 11 are the first cousins onceremoved of the accused and so any person distantly related to P.Ws. 5 and 11 would also be related to the accused. Moreover, the conduct of P.W. 12 does not suggest that he was in any way partial. He acted on the information given to him by D.W. 1 and went to the scene of offence at once and recorded the statement of the accused. That statement he sent without any delay to the police and it was on the accused's statement that the police came to the village. It was only when the police reached the village that the statement of P.W. 8 was handed over to the police. The head constable says that the statement of P.W. 8 was given to him at 10 P. M. and there is no reason to doubt the truth of his evidence; for it could have been a matter of no consequence to the police whether P.W. 11 was booked for this offence or the accused.

6. The prosecution story is spoken to by three witnesses. Although P.W. 9 may be interested and his evidence has to be accepted with caution, P.W. 10, a distant relative of the parties, seems to be quite disinterested. Finally, there is the evidence of P.W. 8, who was the farm servant of the accused and who, if the accused's story is true, was present with his mother and helping the accused. If his mother had been killed and he struck, as D.W. 1 says, by P.W. 11, he would have been only too eager to complain against P.W. 11 for dealing these savage blows at his mother. The accused has attempted to show that P.W. 8 was bought over. It is said that P.W. 5 sold a piece of land to P.W. 7, that P.W. 7 subsequently transferred the land to a distant relative of P.W. 8 and that P.W. 8 attested the document. No evidence that is worthy of any credence has been adduced to show that P.W. 8 received any benefit from these transactions. Moreover, these transactions took place long after the offence was committed. If P.W. 8's support was bought, he must have been persuaded before 5-30 P.M. or at any rate before 10 P.M. on the day of the offence. He obviously could not have accepted the overtures of the prosecution party without consulting his brother and by the time he had brought his brother and had gone to the village Munsif's house and brought other pangalies as he apparently did there was little time left for him to enter into negotiations with the prosecution party to exculpate P.W. 11 and to foist the case on the accused. A number of witnesses were examined in the Sessions Court for the defence, but they did not figure very well in the witness box; and so the

learned counsel for the appellant has rightly not sought to place any reliance on their evidence. I am therefore satisfied that the learned Sessions Judge came to the correct conclusion that it was the accused who caused this fatal injury. To pick up a stick which is said to be three fingers in diameter with a ferrule at the end and which, from the nature of the injuries, must have been a very heavy one and to give an old woman such a heavy blow on the head so as to break her temporal bone into several pieces is certainly, in the words of Clause (3) of Section 300, Penal Code, 'to do an act with the intention of causing such bodily injury to the deceased,' as was found in the post mortem examination. That injury was undoubtedly sufficient, in the words of the same clause, 'in the ordinary course of nature, to cause death.' In fact, it would have been most remarkable if she had survived such a severe beating. Death was inevitable and the evidence shows that she died almost instantaneously. The accused therefore committed murder and the learned Sessions Judge was wrong in convicting him only under Section 304, Part 2. However the learned Sessions Judge has taken shelter behind his Public Prosecutor: and it is not the policy of the Crown to press for a conviction for a more serious offence if the local representative of the Crown has represented that such an offence was not committed. No notice has therefore gone to the accused to show cause why the sentence should not be enhanced. The sentence in the circumstances is a light one. The conviction and sentence are affirmed and the appeal dismissed.