

In Re: Annika Lakshmudu and ors.

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Court : Chennai

Decided On : Mar-11-1941

Reported in : AIR1942Mad237

Appellant : In Re: Annika Lakshmudu and ors.

Judgement :

Mockett, J.

1. The five appellants have been convicted and sentenced to death by the learned Sessions Judge of East Godavari for the murder on 26th September 1940 of Chinki Asahayudu. The deceased and the accused lived in the village of Siddavaripalem which is shown on the plan and all that it is necessary to note on the plan is that, as is in evidence, any one who wishes to visit the shandy which is used by the people of this village must pass through a forest and later through a village called Erakapuram to reach that shandy and consequently on returning from the shandy they will take the same way in the opposite direction. There is a history of the parties in this case which may be shortly noticed although it is of no very great importance. The deceased was the husband of P.W. 4 who had been married when she was young but had not joined her husband. Then P.W. 4 lived with P.W. 7 and married him but remained with him only for a year. She then left him and went to live with the deceased. P.W. 7 married again one Chinnammi who bore him two children and then this Chinnammi joined Asahayudu.

2. Naturally this action of the deceased in attracting two women from the house of P.W. 7 into his own caused trouble in the village and a panchayat was held and Asahayudu was directed to pay Rs. 116 to the caste elders for distribution to the aggrieved parties. The amount was reduced to Rs. 40 of which P.W. 7 received Rs. 20 and the rest of his castemen the other Rs. 20 between them. We mention this narrative because it is suggested in this case that the relations of Annika Nukayya were much aggrieved because of the action of the deceased who had taken two women from P.W. 7 and it was thought the particular caste was thrown into disrepute. That is alleged to be the reason why Asahayudu was murdered by accused 1 to 5. Naturally to attach any great importance to this circumstance would be to attach importance to matters which must be purely conjectural. But they do at any rate make intelligible what did happen on that evening as was found by the trial Court. P.W. 4 was returning from the shandy to the village of Siddavaripalem and she had reached a tadi tree marked on the plan which is in a jungle. P.W. 4 was walking in front carrying the shandy purchase and the deceased was walking behind. She heard a rustling sound and turning round states that she saw the following scene which we reproduce in her own words:

I saw accused 1, Annika Lakshmudu, cutting Asahayudu on the leg. Accused 1 next cut Asahayudu on the left side of the forehead. The other four accused belaboured and thrashed Asahayudu with sticks. The knife used by accused 1, Lakshmudu, was like M.O. 1. The sticks held and used by accused 2, 3, 4 and 5 were like M.Os. 2, 4, 6 and 7. I bowed and clasped hands crying, 'Babu, Babu,' and then accused 3, Tenke Bennayya hit me on the right thumb and accused 2, Masara Venkanna, hit me on the left shoulder.

3. That is her statement and description of what happened. It is convenient now to pause for a moment and see what were the wounds found upon this man. The doctor Venkataraman, P.W. 3, held the post mortem examination on the deceased at 6-15 P.M., on 29th September. He said he found five injuries on the body;

(1) a cut exposing the skull bone 2 1/2' by 3/4';

(2) a simple fracture of the middle third of the left upper arm;

(3) a compound fracture of upper third of right upper arm;

(4) a simple comminuted fracture of lower third of left radius and a simple fracture of lower end of the shaft of left ulna bone; and

(5) a compound comminuted fracture of lower third of left tibia with the lower end of the upper fragment protruding through a wound. There was also a fracture of the middle third of the shaft of left fibula. On an examination of the head he found a cross shaped fracture on the left side of the frontal bone and on opening the skull bone he found that the left three-fourths of the horizontal fracture and the lower three fourths of the vertical fracture were visible inside also. He states that injuries 2, 3, 4 and 5 could have been caused by a blunt instrument like a stick and No. 1 could have been caused by a sharp instrument like M.O.

1. He thinks that the sticks could have caused the fractures. So, it will be seen that the injuries found upon the deceased correspond with the account of the attack upon him as described by P.W.

4. She herself had two injuries on her which are described by the doctor as follows:

(1) a swelling on the other part of dorsum of right hand with swelling of the upper part of the thumb and

(2) a contused swelling on the lower portion of front of left shoulder. So it will also be seen that both as regards the injuries which she describes she saw inflicted on the deceased and the injuries that she states she herself actually received she is corroborated by the medical testimony.

4. It is naturally of great importance in a case of this sort to examine the subsequent conduct of the principal witness who is P.W. 4. She was described by the learned Sessions Judge quite rightly as 'a frightened & ambushed woman.' She threw down her basket and ran away home and she sent word through one Kesavayya who has been described as a boy. He called her son-in-law, P.W. 5 and when he came, which he did according to P.Ws. 4 and 5, she told him what had happened and in much the same words as have been set out above. P.W. 5

according to her, went to the spot and what happened there will be described when dealing with his evidence. Now the village of Siddavaripalem is a lonely place and the inhabitants do not venture out at night for fear of wild animals and so no message was sent to the authorities until the next day. The next day P.W. 5 went to the Village Munsif at a village called Peda Mallapuram and he came to Siddavaripalem about noon. He examined P.W. 4 and she made a statement to him which is marked Ex. F in this case. An examination of that statement shows that she described consistently with her evidence in the Court the incidents of the night before. She assigns to the various accused the weapons and the use of the particular weapons in each case.

5. P.W. 5, the son-in-law, tells how he was summoned by being told that he was urgently required and he went home and then P.W. 4 told him again in similar terms to those which we have already set out how her husband had been attacked by these five accused and with those weapons and in that manner. But he adds that P.W. 4 asked him, 'go and fetch the deceased home.' This he did. He states that the deceased said to him, 'Annika Lakshmayya cut me with a knife. Mosara Venkanna, Tenke Benayya, Tenke Butchayya, Annika Injappa beat me with sticks. I do not hope to survive.' There has been some criticism of this witness with regard to whether he can be believed when he says this statement was made for reasons which we will deal with presently. P.W. 5 proceeded to the village of Peda Mallapuram and he made a report to the Village Munsif. The Village Munsif came back to Siddavaripalem and at the village he recorded from P.W. 5 Ex. G. Exhibit G gives an account which is similar to that which has already been given by P.W. 4, but the statement which P.W. 5 made to the Munsif does not mention that the deceased made the dying declaration which we have set out. It does however say that the deceased said 'he (the deceased) asked me, to take him home' and that with the assistance of villagers he was brought home. It is not suggested that any other statement was made by the deceased who died soon after. At this point we may deal with the criticism which Miss Chockammal levelled at Ex. G, namely, the omission to refer to the dying declaration. There is this to be said about it. It is quite clear from Ex. G that P.W. 5 told the Village Munsif that the deceased was able to speak because he said 'he asked me to take him home.' That being so, the probabilities that he also told him what had happened are great. Of course it may

be said that knowing already from P.W. 4 what had happened he may have at the trial thought fit to add it to his evidence but we do not consider that the omission from Ex. G of the statement seriously affects the credibility of P.W. 5 as a whole.

6. The accused were arrested on 29th September and P.W. 10, the Village Munsif, describes what happened. This witness describes how he was summoned to Siddavaripalem and saw the dead man and he also describes how he took the statement Ex. G from P.W. 5 and Ex. F from P.W. 4. He seems to have sent this report promptly and in this case there has been no cross-examination to suggest that there was any manipulation or preparation of the evidence at Siddavaripalem. When the police arrested the accused the Munsif states that the following occurred:

Accused 1 Lakshmudu first was questioned by the Sub-Inspector in these words 'Did you commit the offence? Produce the sticks and knives used by you? You need not be afraid if you do so.' All the five said 'we admit the offence.'

7. Thereupon the Sub-Inspector took them to the house of accused 1 and they made statements, A-1 producing a knife and A-2, A-3, A-4 and A-5 sticks. These statements which are of a confessional nature were received in evidence and used by the learned Sessions Judge. Now it is obvious that on one ground alone they are inadmissible. Section 24, Evidence Act, states 'A confession made by an accused person is irrelevant' and therefore inadmissible in evidence 'in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat or promise.' It is quite obvious that it must have appeared to the Court as it does to us that these statements as proved by P.W. 10 were made in answer to a direct inducement, namely that a promise that nothing would happen to them if they produced the sticks and knives which were used and that request was preceded by the words 'Did you commit the offence?' The learned Sessions Judge while recognizing that there was an inducement as proved by the Village Munsif expresses the quite incomprehensible view that such inducement 'will not take away from the essential truth of the statements made by them and their production of the weapons used by them.' The statements are of course not receivable in evidence at all and therefore their truth could not be the

subject of enquiry. Mr. Ethiraj has quite rightly conceded that on this ground alone, the statements should have been excluded but in addition an examination of them shows that they were, as far as can be gathered, statements made whilst producing the material objects concerned and therefore not statements in consequence of which a fact was discovered. We use the expression 'as far as can be gathered' because we have been put to some inconvenience in this case by the learned Judge recording in Telugu characters the precise statements. The learned Judge is entitled to record answers in English and the proper and usual course is to do so. If the learned Judge considers that it is necessary for any particular purpose to record the statements in the language spoken, a translation should be added. But in the case of A-1 who brought out the knife there is a record of what he said in Telugu but no translation. Excluding these statements, the result is that the case against these men rests on the evidence of P.W. 4 as corroborated by Ex. F and her conduct and by P.W. 5 and in the case of P.W. 5 by his conduct and his statement, Ex. G. No serious criticism can be levelled at the conduct of either of these witnesses. The woman having seen her husband murdered says she immediately went home, sought the aid of the most obvious person, her son-in-law, told him what happened, sent him to fetch the injured man. The son-in-law in his turn at the earliest opportunity ran and reported to the Village Munsif what had happened and immediately the Munsif came to the spot, the statements, Exs. F and G were recorded and apart from the omission in Ex. G to which reference has been made no criticism worth the name has been launched against him.

8. The accused in this case who are men of primitive character give no assistance. They content themselves with a denial both at the Magistrate's Court and at the Sessions Court, saying that the case has been fabricated by the police. We have therefore no opportunity of judging whether there is any question of considering their whereabouts that night or any alternative story. We are satisfied that the evidence of P.Ws. 4 and 5 is reliable and was properly accepted by the learned Sessions Judge. There is no circumstance of suspicion in this case at all to suggest that this story-really a very simple story when one comes to examine it was not the entire truth. The learned Public Prosecutor has quite rightly touched on an aspect of the case namely as to whether the evidence in this case is

sufficient to prove the intention under Section 34 of the Code, namely whether murder was the common intention of all these five people or whether a conviction would not be more appropriate under Section 302 read with Section 149, Penal Code. We do not consider it necessary to pursue this topic further because the result will be academic for the following reasons. It relates to a matter of sentence. The accused were all undoubtedly waiting with the intention of committing the most violent assault upon the deceased and it has been proved that one of them used a weapon which, in spite of the contentions of the defence, we regard as an obviously deadly weapon, namely M.O. 1. We consider that in his case the sentence of death should be confirmed. In the case of others having, as we have already indicated, regard to the sort of people they are, we think it will be enough in the interests of justice, if, instead of the sentence of death, a sentence of transportation for life is substituted.

9. The result will, therefore, be that we consider the conviction of all these five persons for murder was correct and so far as their appeals are concerned they are dismissed. We confirm the sentence of death in the case of accused 1 but we set aside the sentence of death in the case of accused 2 to 5 inclusive and instead sentence them to transportation for life.