

In Re: Semalai Goundan

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SooperKanoon Citation : sooperkanoon.com/816063

Court : Chennai

Decided On : Sep-10-1924

Reported in : AIR1925Mad574

Appellant : In Re: Semalai Goundan

Judgement :

Spencer, Offg.C.J.

1. The accused has been convicted and sentenced to death, by the Sessions Judge of Coimbatore for the murder of Karuppana Goundan, a boy of thirteen years, son of a widow, who was the 4th prosecution witness. There is clear proof in the depositions of this woman and P.W., 6, her co-tenant, that the deceased went on the morning of January 31st to the pen in the field, which was cultivated by them jointly, in order to take food for a dog, who was left on guard at that place. At about noon, P.W. 6 found the boy lying dead in the pen, with a severe wound on his neck, which severed the spine and the vertebral arteries. The evidence to connect the accused with the offence is that he was seen by P.W. 7, going to the pen, where the murder must have been committed and coming away quickly a short time afterwards and going eastward. P.W. 10 also says he saw him going to the spot; but he did not see him on the way back. P.W. 9 saw him at a distance of 2 furlongs from the pen and coming away and running alone the itteri to the east. His evidence to that extent corroborates the evidence of P.W. 7. The learned Sessions Judge has accepted the evidence of these witnesses, in spite of the fact that P.W. 7 is a man of 70 years of age and unable to see well and that P.Ws. 9

and 10 have cultivated the village munsif's fields. I am not prepared to say that the lower Court was wrong in acting on this evidence, as the learned Sessions Judge was in the best position to form an opinion, as to whether they were speaking the truth and whether P.W. 7's eyesight was sufficiently good to be able to see what he says he saw. The fact that P.Ws. 9 and 10 are tenants under the village munsif of Kulippalayam is not a ground for discrediting them, in the absense of any evidence to show that the village munsif was responsible for getting up a false case against this accused. The village munsif (P.W. 12) denies that he ever asked the accused to sell his land, or that there is any enmity between him and the accused in the matter of wages. Even supposing that there was some truth in the story that he wished to buy the accused's land and that the accused refused to sell it, it does not follow that a transaction of that sort would engender such ill-will, as would have led to the concoction of a false case of murder. Be this as it may, the strongest reason for thinking that the present case was not concocted against the accused is that the information upon which he was arrested came out very soon after the crime, by an unexpected and accidental means. P.W. 3, the village munsif of Kilankundal, collected kist from the accused at about 2 p. m, on the date of the offence and he found him to be in an agitated state and answering his questions incoherently. When he asked the accused why he had not brought his receipt book, he blurted out some statement, which led to his being arrested and handed over to the Police. Next morning there is evidence s of this witness and P.W. 8 that the accused pointed to a spot in a prickly-pear 3 bush, where M.O. 1, a bill-hook on which 7 human blood-stains were detected, was discovered. The Sub-Inspector, P.W. 8, says that the accused took him to the spot on the night of the same day-January, i, 31st-but owing to want of light, the bill hook was not found at that time, and during the night the spot was guarded by a t constable and talayaris. The fact that the 3 accused pointed out the place, where the e weapon was found, as being the place at e which it was concealed, and the fact that f shortly after the crime he was in a very agitated state and made a statement which led to his being asked to show the spot where the weapon used in the commission g of the murder was concealed are evidence is of conduct under Section 8 of the Evidence n Act, which render highly probable, the oral evidence in the case and indicate that a the accused was the murderer,

2. In addition to this, there is the evidence of motive. P.W. 4 states that she took the accused as a partner in cultivation and that as he did not work well, she dispensed with his services and took his younger brother (P.W. 6) in his place and that he was annoyed in consequence and was quarrelling with P.Ws. 4 and 6. The fact that the accused made a statement that the weapon with which the crime was committed was concealed in a prickly pear bush would ordinarily have been admissible under Section 27, of the Indian Evidence Act, if it was made when he was in custody of a Police Officer, but the Sessions Judge was right in excluding it from the record under Section 24, if he thought that the accused was still under the influence of the village munsif's promise, to save him from punishment. I consider however that he was wrong in supposing that the amended Section 162, was intended to exclude from evidence records of searches and documents of a nature similar to Ex. D. In my opinion, this section, both before and after amendment, is directed against the admission, at the instance of the prosecution, of Police diaries and other records, prepared or copied from the diaries of investigating officers.

3. The learned Sessions Judge in paragraph 6 of his judgment expresses an opinion that Section 162 of the Code of Criminal Procedure, as revised, makes every statement to a Police Officer irrelevant for any purpose, unless it is proved at the instance of the defence, thus treating this section as virtually superseding Section 27 and other sections of the Evidence Act. I am clearly of opinion that the provisions of the Evidence Act are quite independent of the sections in the Criminal Procedure Code and cannot be treated as impliedly repealed in consequence of the amendment of the Code of Criminal Procedure.

4. The fact that accused pointed out the place where the bill-hook was concealed is evidence of conduct which, if unexplained, is inconsistent with his being an innocent person. It has been argued that the crime might have been committed by P.W. 6; but I can find no motive sufficient to lead this man, who had supplanted his brother, to take the life of the child of the woman, whose land he was cultivating. It is not proved or admitted that there was any immoral relation between him and Sellammal; and even if there had been such relations, there would have been no necessity to permanently get rid of her child, in order that the couple might cohabit together. The weapon with which the crime was committed belonged to P.W. 11,

as the letters T on it prove; but he was not aware that his knife had been taken; until the monigar told him to go and look and see if it was missing. This man had not the least motive to murder this innocent child. As to the village munsif, it is difficult to believe that he had any part in concocting a case against the accused, because in his first report, Ex. G, he did not even mention the accused as a person likely to have committed the crime, and there is no reason to suppose that in the short interval of time that passed before the accused was arrested and charged with the offence, the other witnesses in the case could have been gained over and persuaded to speak falsely against him.

5. The guilt of the accused has been sufficiently proved and the offence can be nothing else but murder under Section 302, Indian Penal Code. Seeing that the murder was committed in a Very cruel manner upon an innocent child from a desire to cause sorrow to its mother, there is no reason to interfere with the sentence of death imposed by the Sessions Judge. The conviction and sentence are confirmed and the appeal is dismissed.

Reilly, J.

6. I agree that the evidence against the accused to which my Lord has referred, including the evidence that he pointed out the place where the bill-hook, M.O. 1, was found but excluding his alleged statement to the village magistrate of Kila-kundal, P.W. 3, that he had put the billhook in that place, is sufficient to warrant the conviction of the accused. I prefer not to express any opinion, whether the alleged statement to the village magistrate, which the Sessions Judge has excluded from consideration, could be admitted under Section 27 of the Evidence Act. I also do not wish on this occasion to express any opinion about the proper interpretation of Section 162 of the Code of Criminal Procedure as now framed, as I do not think it is necessary for the disposal of this case. I agree that the conviction and sentence of the accused should be confirmed.