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In Re: Veera Karavan

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Court : Chennai

Decided On : Jul-04-1929

Reported in : 126Ind.Cas.488

Judge : Horace Owen Compton Beasley, C.J. and; Anantakrishna Ayyar, J.

Appellant : In Re: Veera Karavan

Judgement :

1. The three appellants have been convicted by the Additional Sessions Judge of Coimbatore of the offence of the murder of one Muthusami Asari under Section 302, Indian Penal Code. The first accused has also been charged with the offence of voluntarily causing grievous hurt under Section 325, Indian Penal Code. All the four assessors were of opinion that the three accused were guilty of murder under Section 302, Indian Penal Code, and the learned Additional Sessions Judge agreed with the said opinion.

2. The prosecution case is that at about 7 P.M. on Saturday the 15th December, 1928, the deceased Muthueami Asari, P.W. No. 1 and P.W. No. 18 were returning to Nallagoundanpalayam, that, when Muthusami Asari came opposite to the third accused's garden, the third accused shouted to accused Nos. 1 and 2 that they had caught Muthusami Asari after all, that accused Nos. 1 and 2 bodily carried away Muthusami Asari into the third accused's garden and that Muthusami Asari was beaten to death with sticks and bala by the three accused. The plea of the accused on the other hand is that Muthusami Asari was inimical to the third

accused and that, when he saw the third accused at the third accused's garden on the evening in i question he (Muthusami Asari) entered the garden and after fixing on a spear-head to a stick which he had in his possession went after the third accused who, however, ran into the garden and shut himself up in a hut in the said garden, that the first accused, a servant of the third accused resisted Muthusami Asari, that there was a scuffle between Muthusami Asari and the first accused the result of which was that the first accused received a spear-wound on his back inflicted by Muthusami Asari and that in self-defence Muthusami Asari was beaten and he finally fell to the ground and died in the garden. The question for decision is which of the two versions is supported by the evidence in the case. Considering the prosecution version first, we have got the following facts established by the evidence on the record:

1. The third accused was on terms of criminal intimacy with P.W. No. 10, the wife of the deceased Muthusami Asari, and that about two years ago the third accused's wife brought that matter to the notice of Muthusami Asari who beat P.W. No. 10 and sent her away to her mother's house. It would seem that after about six months, Muthueami's sister took back P.W. No. 10 to Mathusami's house. It is in evidence, however, that the third accused made fresh overtures to her which, however, were unsuccessful, P.W. No. 10 sending word in reply that she had already got beaten for her previous misconduct with the third accused and that her husband might murder her if she again went to the third accused.

2. It is in evidence that the third accused and Muthusami had jointly borrowed money from a Bank, that the Bank filed a suit against both and got a decree, in execution of which Muthusami was arrested and the entire decree amount realised from him, Muthusami subsequently filed a suit for contribution against the third accused and got a decree, in execution of which he arrested the third accused by the issue of a warrant and the decree amount was realised only after the third accused was thus arrested.

3. About 15 days before the occurrence in question the third accused had prefer red a complaint of theft of a leather bucket against Muthusami, Muthusami's contention being that the complaint was an absolutely false one.

3. Thus, three motives are suggested by the prosecution far the third accused being dissatisfied with Muthusami. It is no doubt true, as pointed out by the learned Counsel for the appellants, that ordinarily the first of the three motives mentioned above might be a ground for Muthusami doing something towards the third accused, but, as was suggested in the evidence, the, third accused being bent upon having P.W. No. 10 would probably take steps to have Muthusami out of the way so that he may have the obstacle towards his having P.W. No. 10 removed.

4. Having mentioned the evidence as Regards the motive, we propose to consider the direct evidence as to what happened on the evening of the 15th December.

5. His Lordship after dealing with the evidence concluded:

Thus, there is direct evidence on the side of the prosecution, of eye-witnesses to the occurrence, given by people who belong to different castes and against whom nothing material has been proved as to why they should give false evidence charging the appellants with murder. We have got the motive why the third accused, the master of accused Nos. 1 and 2, would like to have Muthusami Asari out of his way. Information was given to the Village Munsif by about 10 P.M. that Very night by P.W. No. 1. There is reliable evidence that accused NOS. 1 and 3 were drunk at the time. In these circumstances we think that the learned Additional Sessions Judge was right in accepting the unanimous opinion of the four assessors that accused NOS. 1, 2 and 3 are guilty of the offence of murder. We accordingly confirm the conviction, and also the sentence as the murder was a brutal one. Accused Nos. 1 and 3 have also been found guilty under Sections 325 and 324, Indian Penal Code, respectively, but, having regard to the fact that we have confirmed the sentence of death passed by the lower Court, no separate sentence need be passed in respect of the offences under these sections. The appeal preferred by the accused is dismissed.

6. Before parting with this case, we think it right to observe that the practice of tendering important eye-witnesses cited by the prosecution for cross-examination is not a practice which should be encouraged. In this case, Muhammad Sultan, cited by the prosecution, is a material witness who was present at the scene of

occurrence. He is said to have been standing at the distance of a mar from the actual scene of struggle, and would prima facie be able to speak to important facts material to the case. Instead of putting him into the box and eliciting facts within his personal knowledge and observation, the prosecution merely tendered him for cross-examination. Very discreetly, the defence Counsel put no questions to him. In cases where any witness known to the prosecution is able to swear to facts very material to the case, the proper procedure to follow is to ask him to give evidence on oath as to the several facts known to him, which are relevant to the ease, though other witnesses might have spoken to the same facts. Merely tendering him for cross-examination' is not a practice which should be encouraged, especially in murder cases, as it would be very unfair to the accused. If such a practice is in vogue in other Districts also, we think it proper to remark that the same should be put an end to.

7. As observed by Field, J. in Queen-Empress v. Ram Sahai Lall 10 C. 1070 at p. 1073, 'now, it must be understood, and it had recently been pointed out in more than one judgment of this Court, that in conducting a case for the prosecution, all (the witnesses who are alleged or are known to have knowledge of the facts ought to be brought before the Court and examined.' In the present case, it is clear from the evidence of the other prosecution witnesses, that Muhammad Sultan was present at the scene of offence and when the offence was being committed. If so, he should have been asked to swear to facts known to him in the ordinary way, and not merely 'tendered for cross-examination.'

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