

**Basireddi Narappa Vs. Emperor**

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**Court :** Chennai

**Decided On :** Aug-02-1923

**Reported in :** AIR1924Mad391

**Appellant :** Basireddi Narappa

**Respondent :** Emperor

**Judgement :**

1. In this case the appellant;, the 1st accused in Sessions Case No. 76 of 1922 before the Sessions Judge of Ananthapur, was convicted by the learned Sessions Judge Of the murder of one Vodde Chinnagadu, a servant in his house, on the night of the 20th of May 1922 and sentenced to transportation for life.

2. There were three accused originally but accused 2 and 3 have been acquitted by the learned Judge. Before we consider the evidence in the case, it will be convenient to deal with a preliminary point which has been raised in the case based upon what is called the tender of a pardon to this accused.

3. It is contended for the accused by his learned pleader that the pardon was not properly forfeited or cancelled and that it was an obstacle in the way of his having been tried, as he has been along with the other accused. But, in the circumstances of the case we think such a pardon will not be a proper objection to the trial. What happened was that this accused promised at first to make a clean breast of all the circumstances of the murder and he was tendered a pardon conditional on his

doing so. Before he was treated as an approver and put into the box, he made a statement to the Court that he did not want the pardon and that he wished to be tried and that the pardon might, therefore, be cancelled. We think it is open to an accused, who has accepted pardon in the first instance, to resile from that pardon and to say that he does not want the pardon and that he is not willing to give evidence but wishes to be tried, so that his character may be cleared. In those circumstances, we cannot treat the pardon as an accepted pardon. The acceptance must continue in force till the person pardoned actually gives evidence and it is only then that any question would arise as to whether he has forfeited the pardon by his not giving true evidence in the case. But as in this case the pardon though accepted for a time, was rejected by the accused himself before it really took effect, We cannot treat this as a case falling under Section, 339, Cr.P.C., and, therefore we think it was not an objection to the trial of this accused along with the other accused for the offence of murder. In the case cited to us, *Arunachellam v. Emperor* (1909) 31 Mad. 272 the circumstances were different. There the person to whom the pardon was tendered did not refuse to give evidence. He did go into the witness-box and was giving evidence. What happened was that he began to say things which were not in consonance with what he led the prosecution to expect he would say, and in consequence of that, his pardon was cancelled and he was put into the dock at once. It was that procedure that this Court decided was not a proper procedure; because when a person has accepted a pardon and is giving evidence, he cannot be tried till it is shown that the evidence which he gave is not a full and true statement of the facts he knew and the pardon forfeited; that should be done in a separate proceeding and he should ordinarily be tried for the offence, if the pardon is found to have been forfeited, in a separate trial. That is not the case here, because the accused himself, as we have said already, rejected the pardon before it took effect.

4. As regards the merits of the case, practically the only evidence against this accused is his own confessional statement, Ex. (1). No doubt, as the learned Judge says, the Magistrate who took that confessional statement took several precautions to see that it was voluntarily made by the accused; but very often it happens that some influence brought to bear upon the accused continues in spite of the Magistrate's efforts to get it removed. This confessional statement was

retracted by the accused both before the Committing Magistrate and before the Sessions Court. In these circumstances, we have to be very careful and, it is only if we are fully satisfied that it is a true, and really voluntary and reliable statement that the accused has made, we should rely on it against him. Here the accused says that he was induced by the Sub-Inspector of Police to make the statement by giving him hopes of being taken as an approver and let off. The circumstances which happened in the case would rather corroborate this statement of the accused because as a matter of fact, a pardon was tendered to him and he was at the beginning made an approver. We have then to see also what corroboration there is of the facts stated in the confession. If the statements made there are corroborated in material circumstances, we might treat it as a reliable document; but in the present case we find there is very little corroboration. It is suggested that the motive stated by the accused is corroborated by the evidence to show that his servant Chinnagadu was carrying on an intrigue with his daughter. But this seems to have been going on for two or three years before the occurrence and the story told in the confessional statement itself about it that all on a sudden, early on the morning of the 21st of May the accused and the two others who have been acquitted in this case conspired together and decided to murder this man because of the intrigue seems to be farfetched. It is a very unlikely thing that such a resolution would have been made in such a sudden fashion. It is not suggested that the man was taken to the thrashing floor for the purpose of being murdered at all; so that we think that this corroboration on the question of motive is of very little value. The corroboration next relied on is that of the place of the murder, but it must be remembered that it would have been well known to everybody in the place that the murder had been committed in the thrashing floor because of the blood marks there. Therefore that corroboration cannot be treated as corroboration in a material particular. The learned Judge also refers to the conduct of Sivappa in leaving the thrashing floor and the attempt to hush up the matter as supporting this confession. But these two circumstances are not mentioned in the confessional statement and it is not possible to see how this evidence can be treated as corroborating the confession. There are one or two circumstances which rather contradict the confession. The first one is the medical evidence which makes it rather unlikely that any spear was used for the purpose of killing the deceased.

The other circumstance is that no mention whatever is made of the two females who gave evidence, P.Ws. 1 and 3, who say that they went to the deceased and got betel from him that night. There is no mention of this whatever in the confession al statement. In these circumstances, we are not inclined to rely upon this confessional statement as embodying the truth in the case. It would be most dangerous to convict a person on such a confessional statement as this. Apart from the confessional statement, there is the evidence, to which we have already referred, of the female witnesses who say that they saw these people in the thrashing floor the previous night. The learned Judge seems to have been inclined to discredit them but he says that he believes it because of the statement of the 2nd accused which corroborates it. The statement of co-accused like that can hardly be used against; the 1st accused. Very probably that story is a false story and we are not prepared to act upon it.

5. In these circumstances we are unable to support the conviction of the accused by the learned Sessions Judge. We set aside his conviction and direct him to be released.

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