

In Re: Irula Sadayan Alias Peria Sadayan

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Court : Chennai

Decided On : Mar-01-1915

Reported in : AIR1916Mad783; 29Ind.Cas.72

Judge : Ayling ;Spencer and ;Seshagiri Aiyar, JJ.

Appellant : In Re: Irula Sadayan Alias Peria Sadayan

Judgement :

Spencer, J.

1. The reasons which the Jury voluntarily expressed as the ground of their verdict of not guilty' indicate, in my opinion, that they had no good reasons for their decision and that the verdict is one which should not be accepted.

2. The Judge had an equal opportunity of observing the demeanour of the witnesses and he was satisfied with the evidence of prosecution witnesses Nos. 1 and 2 that the skins were those of their missing she-goat and kid. The delay in putting in a formal complaint of theft has been accounted for by the prevailing floods. It could not be expected that any other witnesses would be forthcoming to speak to the identity of particular animals in a flock besides the shepherd and his son who assisted him in pasturing them; the knowledge that such shepherds possess as to the animals composing their flock is likely to be intimate; and in this instance the existence of two skins renders the chance of a mistaken identity doubly improbable.

3. Moreover, this is a case in which the Jury would be wrong if they laid undue stress on a question of identification. For it was not the accused's case that the skins were not stolen ones. He stated in the Magistrate's Court that a man dropped the skins near him when he was sleeping, that he chased him but was unable to catch him and that next day he picked up the skins and took them to Manalurpet to sell them.

4. Thus the first reason given by the foreman will not justify the Jury's verdict. The second reason, that the accused was prejudiced by not employing a Pleader to defend him is not a proper reason to give for acquitting him. As the Jury are shown to have acted on considerations which ought not to have influenced their decision, we may discard their verdict and see if there is sufficient evidence to convict the accused.

5. The 3rd prosecution witness is the person to whom the accused was about to sell the skins. If his demeanour or answers were in any way suspicious, it would be consistent with his position as a would-be purchaser of stolen goods. The accused's possession of the skins is proved by other evidence and is not denied by him. The prosecution case does not depend on the 3rd witness's evidence. The accused was found in possession of stolen property the day after the theft and he failed to account satisfactorily for his possession of it.

6. Under these circumstances I have no hesitation in agreeing with the Sessions Judge that the guilt of the accused has been proved and I would convict him under Section 379 of the Indian Penal Code.

7. But as my learned brother is of a different opinion, the case will be referred under Section 429 of the Criminal Procedure Code to a third Judge.

Seshagiri Aiyar, J.

8. In this case, I have the misfortune to differ from my learned colleague. The accused was charged with having committed theft of a goat and its kid on the 21st November 1914. The story for the prosecution is that the next day the accused was seen in the stall of the 2nd witness for the prosecution with the skins of the

two goats and as his explanation regarding the possession of the skins was not satisfactory, he was arrested. There was no complaint of the theft of the goats until the 4th of the next month. The evidence of the 1st prosecution witness is that these goats were stolen from his house on the night of the 21st November and that he is able to identify the skins as belonging to the stolen goats. In answer to the Court he said I saw the skin on the 4th Saturday after the loss.' The 2nd witness is the son of the 1st prosecution witness, and he says that the two skins before the Court are those of the goat and of the kid which were stolen. The 3rd prosecution witness is a man who keeps a tannery and he stated that the accused had a bundle of salted skins in his possession, that the skins were fresh flayed, and that while he was bargaining for their purchase the Head Constable came there and arrested the accused. This is the whole of the evidence in this case. The Jury unanimously found the accused not guilty. Apparently the Sessions Judge asked their reasons for the opinion with reference to Emperor v. Chellan 29 M.p 91 : 3 Cri. L.J. 871 and they replied that the identification was suspicious and that the absence of a Pleader for the defence prejudiced the accused. The Sessions Judge points out in his order of reference that the demeanour of the 3rd prosecution witness in the witness box very likely impressed the Jury against him. But he has referred the case to the High Court on the ground that the evidence establishes the guilt and that the Jury were wrong in their verdict. I am aware that it has been held that it is not necessary to show that the verdict of the Jury is perverse and manifestly unreasonable before the High Court can set it aside. See Emperor v. Annada Charan Thakur 2 Ind. Cas. 417 : 36 C.P 629 : 13 C.W.N. 757 : 99 C.L.J. 638 : 10 Cri. L.J. 38. At the same time applying the test which would ordinarily be enforced in any appeal, The High Court has to be satisfied that the verdict of the Jury is wrong. The Jury are the Judges of facts and before their verdict is set aside, it has to be established that the conclusion come to by them does not follow from the evidence recorded in the case.

9. The complaint as regards the theft was not made until 17 days after the occurrence. A number of explanations are given in Exhibit A as to the delay in presenting the complaint after such a length of time. One reason is that the complainant informed his master of the theft the next day; but his master has not been called to prove that this information was given. A second explanation is that

there were heavy floods and the complainant could not 'come this side.' It is impossible to believe this story, for I find that the monigar of Manalurpet, to whom the complaint should have been made and who was examined as the prosecution 4th witness, says that the accused and the kins were brought to him on the 22nd and that he sent reports, Exhibits D and D1, to the Police and to the Magistrate on the very same day. No question has been put to him as to whether there were any floods between the place where the complainant was residing and the place where he was residing. The Jury might very well have disbelieved the story as to the theft, having regard to the delay in the presentation of the complaint. Then as regards identification, it is true that the 1st and 2nd witnesses for the prosecution said that the skins were those of the goat and of the kid which were stolen; but remembering that they saw the skins more than three weeks after the theft, a Jury will not be wrong in holding that the identification is suspicious.' Then, the demeanour of the 3rd witness for the prosecution in the witness box seems to have impressed the Jury very badly.

10. Under these circumstances I do not think that the Jury were not justified in holding that the case against the accused has not been proved beyond reasonable doubt. It may be, as was argued before us, that they were not right in disbelieving the story for the prosecution merely because the accused was undefended. But every good Judge looks into the evidence given by one of the parties, when the other party was not in a position to engage a Pleader, with some degree of care and, if the Jury thought that the evidence in this case should be scrutinised minutely on that ground, I cannot say that they were not acting rightly in doing so.

11. Reference has been made by the learned Public Prosecutor to the unsatisfactory explanation given by the accused for the possession of the skins. I do not think that circumstance should be taken into account as proving the theft or as facilitating the identification.

12. On the whole I have come to the conclusion that on the evidence let in for the prosecution, it is not safe to convict the accused; and as the opinion of the Jury coincides with this view of mine I think the accused is entitled to the benefit of the doubt and should be discharged from custody.

13. This reference coming on for final hearing under Section 429 of the Code of Criminal Procedure, on the 26th February 1915, and the case having stood over for consideration till this day, the Court (Mr. Justice Aiyling) delivered the following.

14. Judgment.--The accused in this case was charged with the theft of a goat and a kid from the pail of the house of prosecution 1st witness on the night of 21st November 1914. The Jury found him 'not guilty': but the Sessions Judge differed and referred the case to this Court under Section 307 of the Code of Criminal Procedure. The result was another difference of opinion between the two learned Judges before whom the reference came for disposal: Spencer, J., being in favour of conviction, and Seshagiri Aiyar, J., of acquittal. The case has, therefore, been referred to me under Section 429 of the Code of Criminal Procedure.

15. It will be clear from the above that the case, while simple in its outline, is one not easy of decision.

16. The case against the accused rests entirely on his alleged possession of the skins of the stolen goats within 24 hours of the theft. I see no reason to doubt that he was arrested by the Police on suspicion on the evening of 22nd November in the village of Manalurpet with two freshly flayed skins of a goat and kid in his possession. These skins are identified by prosecution witnesses Nos. 1 and 2 as those of the stolen goats: and the difficulty is whether this identification can be accepted. If it is, the accused's guilt might be presumed: for his explanation of how he came by them is unsupported by any evidence and is not probable. But it is absolutely necessary for the prosecution to establish that the skins found on the accused were those of goats recently stolen.

17. It may be that the prosecution has been over-confident and has not adduced all the evidence available in support of its case; but certainly on the record before me I should hesitate to accept the identification evidence. There is nothing impossible in prosecution witnesses Nos. 1 and 2 recognising and identifying the skins after so long an interval of three weeks. But, as pointed out by Seshagiri Aiyar, J., there are suspicious circumstances about the evidence of these witnesses, which have not been adequately explained. No complaint either to the Police or the village Magistrate was preferred for 13 days after the disappearance

of the goats. There is nothing to corroborate 1st prosecution witness's statement that he went to the Tirukoilur Police station four days after the theft, and was sent away again 'finding nothing.' It would seem from the rest of the evidence that the skins should then have been at Tirukoilur open to identification. The 1st prosecution witness's statement that he found nothing and was sent away by a Constable, is difficult to understand. No questions were asked of any other witness regarding the floods which are said to have prevented prosecution 1st witness from going to Tirukoilur earlier. Prosecution 2nd witness is a boy of 11, and both he and his father, prosecution 1st witness, are pariah coolies, whose evidence carries no great weight. The owner of the goats (a Brahmin ex-monigar under whom prosecution 2nd witness works) has not been examined at all.

18. It seems to me that the evidence both as to identification and as to the theft itself is so suspicious that the Jury were justified in refusing to accept it.

19. I acquit the accused and direct his release.

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