

**In Re: P.C. Perumal**

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**SooperKanoon Citation :** [sooperkanoon.com/820840](http://sooperkanoon.com/820840)

**Court :** Chennai

**Decided On :** Dec-13-1923

**Reported in :** AIR1924Mad587

**Appellant :** In Re: P.C. Perumal

**Judgement :**

ORDER

**Odgers, J.**

1. In this case the accused was charged under Sections 342, 323 and 379, Indian Penal Code, in that at about 5 o'clock on the evening of the 18th November, 1922, he bound the complainant to a tree, snatched away his loin cloth and the towel he had on the upper part of his body and the two rupees that he had in the folds of his loin cloth. He was acquitted under Section 379, but convicted under Section 342 and 323. The conviction was upheld by the Sub-Divisional Magistrate Mr. Section Subramania Aiyar for the accused presents three points for consideration. He says first that there is good and sufficient alibi evidence that the accused, who was employed as a building Sub-Inspector in the Loco Scheme, Golden Rock, S.I. Ry., Trichinopoly, was at work there, on that day and not at the place where the offence is said to have been committed, which is agreed to be about 7 miles distant. The second point is that the Court improperly sailed a Court witness, after the case of each side had been closed; and the third point is that the Court had no jurisdiction to try the case at all, as the offence really amounted to robbery and,

therefore was only cognisable by a First Class Magistrate. With regard to the first point, the first Court disbelieved the alibi evidence, and the lower appellate Court says: 'The lower Court also disbelieved the alibi evidence of defence witnesses 1, 2 and 4, as the appellant did not mention a word about it in his long statement' and proceeds to confirm the conviction. I have allowed the learned Vakil, as I thought it was a case which needed some examination, to take me through the evidence of the alibi witnesses. The first alibi witness, D.W. 1, says the accused was at the workspot in the office until 5 p.m., on the date in question. He and the accused apparently left the work together and went to Trichinopoly Junction by train together. He is a fellow workman with the accused. He and the accused work in one and the same section, under the Sub-Divisional Officer, and the Head Draftsman in the witness's office is the maternal uncle of the accused. Further the witness states from memory and not from any official record that the accused worked with him until 5 p.m. on the 18th November. I am not prepared to say that this witness can be trusted to establish the alibi of accused. To begin with, he is indirectly interested and again he only relies on his memory. With regard to D.W. 2, he first stated that he did not know where the accused was working on the 18th November. However, he speaks to his having met the accused on Golden Rock platform at 5 30 that evening. This man is a Draftsman. Although his office does not work on the Penultimate Saturday, he says he specially worked on the 18th November, though there is no record to show that he did. I cannot believe this man in any way. D.W. 3 was not relied on by Mr. Subramania Aiyar, because he says that no such occurrence as is charged, occurred at all. I am not prepared to believe that. D.W. 4 produces a diary of the accused. He is a clerk in the Railway Executive Engineer's Office. The diary was made up on the 22nd November and the complaint was made on the 18th. The diary is made up by the accused himself, and I must say I am unable to rely on that, in any shape or form. I am of opinion that the alibi evidence was sufficiently considered by the lower Court; and having considered it myself, I find it does not establish an alibi in favour of the accused.

2. With regard to the second point, the Court witness was called under Section 540, Criminal Procedure Code, when both the prosecution and the defence evidence had been closed. But neither the prosecution nor the defence had called

Kambarasampettai Peritnana Muthirian, who is mentioned as second witness in the complaint of Nachiar Annual, who is the boy's (complaintant's) mother. It is true that this witness is not mentioned in the list put in by the Police in the charge-sheet, which contains the names of 7 witnesses, of whom 5 were called. The Magistrate, acting under Section 540, the terms of which are extremely wide, called him as a Court witness and apparently relied on his evidence. Two cases are quoted for the defence to show that this witness ought not to have been called. The first is *Empress of India v. Kaliprosonna Doss* (1887) 14 Cal. 245, where a single Judge of the Calcutta High Court refused to exercise his powers under Section 540, on the ground that there was no matter necessitating enquiry or question, to be cleared up and the witness proposed to be called, was not one on whose testimony the Court could place confidence. Here, the Magistrate apparently thought there was a matter to be cleared up, as it appeared that this witness could corroborate the prosecution witness, as to the occurrence on the 18th November. The other case quoted, I may state that no Madras case has been quoted, was *Nataba Ghose v. Adya Nath Biswas* 1923 Cal. 690. That was a protracted hearing by the Special Deputy Magistrate lasting for about 10 months and after the case had been posted for judgment, two witnesses were examined before the Magistrate under Section 540. I consider that that was an exceptional case, and although it is true that proper discretion has to be exercised under Section 540, still the terms of the Section are extremely wide, and any Court may at any stage of any enquiry, trial, or other proceedings, summon any person as a witness, if his evidence appears to it, essential to the just decision of the case. There is no ground for assuming here that the Magistrate did not think that the evidence of this man might; be of importance, one way or the other, either, to support the prosecution, or to destroy the prosecution theory.

3. The third point is that there was no theft but robbery. I am quite unable to accede to this proposition. The Magistrate has found that the reason why the boy was tied up was to punish him for having thrown stones in the street. It is quite unreasonable to suppose that the accused meant to rob the boy of his cloth and two rupees, It is quite unnecessary that a man should have to tie up a small boy, in order to take his cloth from him; so that the object of tying up the boy was not theft at all. Therefore, the offence of robbery was not committed. The boy was tied up to

punish him and then the cloth was taken away from him, to put him to shame and two rupees were found in the cloth. It has been found that the accused did not take the two rupees. In fact, the accused was not guilty of theft at all, I find these three points against the petitioner and dismiss the Criminal Revision Case.

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