

In Re: Karuppana Pillai

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Court : Chennai

Decided On : Oct-11-1926

Reported in : 100Ind.Cas.359

Judge : Wallace and ;Madhavan Nair, JJ.

Appellant : In Re: Karuppana Pillai

Judgement :

1. The accused in this case has been convicted by the learned Sessions Judge of Trichinopoly for the offence of murder and sentenced to death. The prosecution case shortly was that he murdered his brother on the night of 1st April, 1926. The brother was sleeping on the inner pial of the house that night and the mother and the accused were sleeping in the outer pial. The prosecution case is that about midnight the accused attacked the deceased with an aruval. The neighbours were roused by the cry of the deceased and several of them turned up and saw the mother assisting the deceased from the house and the accused according to one or two of them, was sitting on the pial with an aruval in his hand. Certain evidence is put in before the lower Court that the mother, P.W. No. 6, herself had at one stage in the proceedings said that she saw the accused attacked the deceased with an aruval, and the learned Judge's judgment, it appears to us, is based mainly upon her statement. That statement was made when the woman was examined under Section 164, Criminal Procedure Code. In the Committing Court she denied that she had seen the accused attack the deceased. Here we think the learned Judge makes a serious mistake when he thinks that Ex. K, which is her deposition

before the Committing Magistrate, contains the statement that she admitted that the accused cut the deceased, The statement runs:

It is true I told the Deputy Magistrate that the accused cut the deceased Kunju Pillai on the face. It is correct.

2. The learned Judge has accepted this as meaning that it is correct that the accused cut the deceased which is not what appears on the face of the evidence. In the Sessions Court the woman repeated very much the same statement and her deposition before the Committing Court, Ex. K, was put in under Section 288, Criminal Procedure Code. But the admission of that deposition does not entail the admission of her statement under Section 164 as substantive evidence in the case and we are not entitled to use that in that way. It is a statement which could be used simply to contradict the witness and to show that she was unreliable with a view to taking her evidence out of the case which otherwise might re-act unfavourably upon the evidence of other witnesses examined for the prosecution. It is clear from the various statements made by this woman that her evidence is unreliable and that her statements made both to the authorities and to the neighbours at the time cannot be accepted as reliable evidence that it was the accused who cut the deceased, and the safest thing to do in the case is to put aside these statements altogether.

3. Then we are left with the evidence of one or two witnesses who say that they were aroused by the deceased's cry and came to the place and saw the accused sitting on the pial with an aruval. These witnesses are P.Ws. Nos. 4 and 8. As far as P.W. No. 8 is concerned, her evidence is not reliable, because she stated for the first time in the Sessions Court that the accused had an aruval in his hand and did not make it in the Committing Court. An important fact of that kind could hardly escape her memory in the Committing Court. As regards P.W. No. 4, there is no particular reason for rejecting the evidence that he gives; but, on the other hand, P.W. No. 7, who lives practically in the same house in another portion of it and was the first on the scene among the neighbours did not see any aruval in the accused's hand. So the evidence as to this aruval is conflicting. None of the witnesses who speak to the aruval say they noticed any blood upon it; which again

is rather a striking circumstance.

4. We are faced with the question as to whether a conviction can, when we rule out of account the statements by the mother, be based simply upon the evidence that the accused was found sitting after the murder with an aruval not said to be bloodstained, in his hand. It is, no doubt, a case in which one would naturally expect a brother, assuming his brother had been attacked and almost killed on the spot, to go to the assistance of the injured man instead of sitting by himself with an aruval in his hand. But there is a certain amount of evidence that the accused is a person who is not always in his proper senses; and in the case of a person of such mental constitution it is almost impossible to prophesy with any certainty what his natural conduct would be. It is not, for example, impossible that it occurred to his mind that the person who attacked his brother might also be coming to attack him and that he thought it advisable to arm himself with an aruval. Of course, if the aruval had had bloodstains at the time, that possibility will be ruled altogether. But so far as appears from the evidence, the aruval is not said to have been sustained with blood. It has also been pointed out that the accused's hand is said to have been stained with human blood. We do not think that this is a strong point against the accused in the circumstances, since the deceased was being taken, no doubt bleeding profusely, down the entrance of the house past him.

5. We feel strongly that the learned Sessions Judge has convicted the accused relying almost entirely upon the earliest statement made by the mother which she has repudiated and which we rule was inadmissible. In the circumstances of the case, we are not prepared to conclude from the evidence that remains that the only explanation of the accused's conduct is one which is consistent with having been himself the murderer. We are, therefore, unable to support the conviction of the accused by the learned Sessions Judge and we must reverse the conviction and the sentence and direct the accused to be set at liberty.