

BOMBAY HIGH COURT

Emperor

Vs

Hanmaraddi Ramaraddi

(Heaton, C.J. Shah , J.)

09.03.1914

JUDGMENT

Heaton, J.

1. A certain Hanmaraddi has been convicted of the murder of Rama Valikar and has been sentenced to death. The case comes before us for confirmation of that sentence and also on the appeal of the convict.

2. It appears that about the 22nd of August 1913 the corpse of a man, whose head was almost severed from his body, was found in the village of Haleratti. On making inquiries the police discovered from the neighbouring villagers that the murdered man had been accompanied by another man and a woman. They were all strangers to that locality. Neither the identity of the murdered man nor his companions was at the time ascertained. About a month later, however, the identity of the murdered man came to be suspected. His wife was questioned and thereafter the police were enabled to make complete inquiries. They discovered that the murdered man was one Rama and that his companions were the accused and the deceased's wife Honnava. It was found that Honnava had for some time been living at Makrabi where the accused also lived, that her husband had been working at another village Magal, that he had taken his wife from Makrabi for a time and that thereafter he and his wife set out to go to Haveri and were joined on the way by the accused. On their journey these three persons crossed the ferry between Bannimatti and Galagnath, whence they proceeded to the place where the corpse was subsequently found. From there Honnava and the accused returned, spending the night at a village on the way and recrossing the ferry on the following day. This gave the police an opportunity of which they availed themselves of tracing the movements of these persons and identifying the individuality of each. They have been enabled to put before the Court perfectly credible evidence of all the circumstances that I have stated. Then there is the evidence of the dead man's wife Honnava, who describes how her husband was murdered. It is said that she is an accomplice witness. However that may be, we must, in a case of this kind, regard her evidence with caution, because

whether an accomplice or not, she was present at the murder and for weeks thereafter she gave no information about the crime and it is proved that she had illicit intimate relations with the accused. It does not seem to me to matter in the least whether you call her an accomplice or not. Her evidence must be valued in relation to these circumstances. However, in the light of the surrounding circumstances, from the undoubted truth of the facts that the three persons travelled together, that one of them was left dead where his body was found and that the other two returned to their village together there can be little doubt that the man was" murdered by one or both of them. This conclusion is fortified by the sub-sequent conduct of the accused himself who gave an untrue account of his proceedings and had two letters written at intervals of about a fortnight which were designed to induce people to believe that the murdered man was still alive and working in a distant village. Here, again, the evidence is, to my mind, credible and indeed convincing. Taking the circumstances as a whole, they leave no doubt whatever that the accused was the man, whether helped by the woman or not, it does not matter, who killed Rama.

3. The credit of the elucidation of these circumstances is mainly due to the promptness and intelligence of the police inquiry and for that inquiry I gather, Balwant Vyankatesh, Sub-Inspector of Haveri, is mainly responsible.

4. For these reasons I confirm the conviction and also the sentence in this case.

5. There has arisen and has been discussed a point as to the meaning of Section 162 of the Criminal Procedure Code. It appears that amongst the villagers who were near the scene of the offence when the murder took place was a boy who happened to see the three persons. The deceased's wife before the Committing Magistrate stated that she had not seen this boy Before the Sessions Court she stated that she had seen him On this state of facts the defence might very easily and with no other facts bearing on the point known with some force argue that the woman had changed her story, that the earliest known account of the matter which she gave was less favourable to the prosecution case than that she gave to the Sessions Court and thereon they might very properly found an argument that the witnesses had been tampered with and that the case presented clear indications of that kind of influence which properly ought to raise doubts in the mind of the trying Judge. To rebut an argument of this kind it was proved from the mouth of the investigating police officer that to him the deceased's wife had said that she saw the boy. If what the investigating police officer says be true, then it completely destroys the defence argument. The question argued before us is, whether the police officer could, as the law stands, be allowed to depose to what this woman had said to him for the purpose of corroborating what she said before the Sessions Judge. My own opinion is that the police officer could depose to that effect. I do not propose to discuss the various authorities which have been referred to. Lengthy arguments on this very point find a place in the books. I will only say that I do not think that

either by its terms or by its intention Section 162 of the Criminal Procedure Code prohibits the Court from receiving such evidence for such a purpose.

Shah, J.

6. I concur. The learned Sessions Judge has examined the evidence with great care in an exhaustive judgment and has considered all the arguments urged in favour of the defence. Substantially the same arguments have been urged before us. Generally speaking I agree with the lower Court in its appreciation of the evidence and with the inferences drawn by it.

7. It is not disputed before us that the deceased whose body was found on the 22nd August last was Rama, the husband of Honnava, and the evidence in the case clearly establishes the fact.

8. I accept the evidence of Honnava and Gudda as true in the main. Honnava's evidence, no doubt, must be received with caution, though I do not accept the argument that she is an accomplice. She did not give out her present story soon after the occurrence and gave varying accounts from time to time, which was to a certain extent natural under the circumstances. Having regard to the proved circumstances in the case, I am inclined to believe her present account that she saw the accused killing the deceased. As to the evidence of Gudda, quite apart from the fact whether he was seen by Honnava or not, I accept it as true, despite the criticism of Mr. Velinkar on his evidence. The fact of the journey of the deceased and Honnava in the company of the accused is proved by reliable evidence in the case. The subsequent conduct of the accused, which I do not propose to examine in detail, lends strong corroboration to the prosecution story. It is enough to refer to his association with the letters, Exts. 27 and 28. The accused is proved to have taken those letters to Satyava, which appear on the evidence to have been written at his instance. It is proved that the deceased was never at Amlikop. The obvious inference that arises from the proved conduct of the accused is that he was trying to conceal the death of Rama, which was known to him. On a careful consideration of the evidence and the arguments advanced on behalf of the accused, I have no hesitation in coming to the conclusion that the deceased Rama was murdered by the accused. The circumstances connected with the crime demand that the sentence should be confirmed.

9. The police investigation in this case appears to me to have been made with unusual ability and thoroughness, and affords a telling illustration of the manner in which a case could be investigated without the aid of a confession.

10. I desire to allude to a point which has been raised before us in connection with Honnava's evidence. It has been pointed out that though she stated before the Committing Magistrate that she did not see any Kurbar boy then, she now denies having made that statement, and says that

she had seen a boy from Haleritti. It is urged that the statement before the Committing Magistrate represents the truth. Even then I do not think that the main conclusion in the case is affected in any way. It is urged on behalf of the prosecution, however, that the argument is based upon a misapprehension of facts, and that the Sub-Inspector has been examined to show that Honnava stated before the police that she did see a boy at the time. The question of law that arises is whether the prosecution can be allowed to adduce oral evidence in proof of her statement before the police in order to corroborate her testimony at the trial. Her statement to the police was admittedly reduced to writing, and it is common ground that such writing cannot be used as evidence. Mr. Velinkar contends and not without force that it would be unreasonable to allow any oral evidence of the statement to be given, when the writing containing the statement cannot be proved. On the other hand it is argued on the strength of Section 157 of the Evidence Act that the right of the prosecution to prove any statement to corroborate the testimony of any witness under that section is not taken away by Section 162 of the Code of Criminal Procedure which only provides that the writing shall not be used as evidence. The point is not free from difficulty which is sufficiently reflected in the diversity of judicial opinions bearing on the question. The judgment of Knox J. in *Rustam v. King-Emperor*¹ and the observations of Beaman J. in *Emperor v. Narayen* represent one side of the question and the judgment of Karamat Hosain J. in the case of *Rustam v. King Emperor* (1910) 7 L.J.R. 468(Supra). and the decisions in *Fanindra Nath Banerjee v. Emperor*³ *King-Emperor v. Nilakanta*⁴ and *Muthukumaraswami Pillai v. King-Emperor*⁴ represent the other side. I have carefully considered the question, and on the whole I incline to the view that looking to the plain language of Section 162, Criminal Procedure Code, the writing only is excluded from evidence but the right to prove any statement made to the police by oral evidence to corroborate the testimony of any witness is not taken away by that section. This conclusion derives support from or is at least in consonance with the view taken by this Court in *Emperor v. Babaji* . in which the Court, while directing a retrial, ordered that the Chief Constable should be examined as to the statements made to him by the witnesses during the police investigation. Such an order would be inappropriate, if the oral evidence of the statements were inadmissible. The anomaly, if any, can be remedied by the Legislature. Our duty plainly is to construe the section without unduly straining the language used by the Legislature. I think, therefore, that the evidence of the Sub-Inspector was rightly admitted on this point. At the same time, I think that under ordinary circumstances the admission of the oral evidence of the statements made to the police when they are reduced to writing is not in keeping with the spirit of Section 162, Criminal Procedure Code, and the existence of exceptional circumstances would be absolutely necessary to give any appreciable value to such evidence. In this case, for instance, Honnava's statement in question at the trial deserves to be credited not simply because the Sub-Inspector says that she had made a statement to that effect to him, but mainly on the additional ground that though it was suggested in her cross-examination that she had made a contradictory

statement before the Committing Magistrate, it could not be suggested to her that her earlier statement to the police on this point was in conflict with her present version, and that the Sessions Judge did not ask her any question on this point, though she was recalled on the 8th January, after the Sub-Inspector was examined and questions on other points, arising out of her statement reduced to writing before the police, were put to her by the Court.

Cases Referred.

1(1910) 7 A.L.R. 468

2(1908) I.L.R. 36Cal. 281

3(1912) I.L.R. 35 Mad. 247

4(1912) I.L.R. 35 Mad. 397