In Re: Kaliappa Goundan and anr.

LegalCrystal Citation : legalcrystal.com/791576

Court : Chennai

Decided On : May-03-1933

Reported in : (1933)65MLJ597

Appellant : In Re: Kaliappa Goundan and anr.

Judgement :

Horace Owen Compton Beasley, Kt., C.J.

1. The two appellants were charged in the Sessions Court of Coimbatore with having murdered a woman named Muthayee, the wife of the 1st appellant, on the 16th September of last year and also with having caused evidence of the said offence to disappear by placing her body on the railway line with the intention of screening themselves from legal punishment. They were thus charged, firstly, under Section 302, Indian Penal Code, and secondly, under Section 201, Indian Penal Code. The learned Sessions Judge convicted them of the offence of attempt at murder under Section 307, Indian Penal Code, under the first count and sentenced them to transportation for life. The appellants appeal against that conviction. The Public Prosecutor has presented a Memorandum of Criminal Appeal against that order of the learned Sessions Judge on the following grounds, namely, that the appellants ought to have been convicted of murder and that the learned Sessions Judge, having found in paragraph 18 of his judgment that there was no doubt that the appellants intended to kill their victim, was wrong in convicting them only of an offence under Section 307, Indian Penal Code. It was in consequence of observations which fell from us when the appellants' appeal first came before us that the Public Prosecutor presented his criminal appeal.

2. The prosecution case was that the 1st appellant who is a cart-driver and the 2nd appellant a cooly are related to each other and that the two appellants decoyed the 1st appellant's wife Muthayee under pretence of taking her to see a sick relation of the 1st appellant at Koneripatti, strangled her on the way and put her dead body on the railway line between Somanur and Vanjipalayam so that the train might run over it and obliterate all traces of their crime. There is the evidence of P.Ws. 4 and 5, the former the mother of the deceased and the latter her father, that the 1st appellant had been married for about 15 years and that he was addicted to drink and used to ill-treat the deceased causing her often to seek refuge in their house. At about noon on the day of the occurrence the deceased took her two children to her parents, left them at their house and went away with the 1st appellant saying that she was going on a visit to Koneripatti where a relation of the 1st appellant lay ill. She never reached Koneripatti and her body was discovered across the railway line between Somanur and Vanjipalayam stations. Her head had been severed from her body and lay at some distance away. It is clear that her head was cut off by a passing train and that this train was the Blue Mountain Express. The deceased woman was last seen in

company with the appellants at about 5-30 P.M. by P.W. 9 on a country road along the southern side of the railway line. On this road he met Muthayee and the two appellants. He asked them where they were going and they replied that they were going to Pollachi. Previously to this the deceased is shown to have been in the company of the appellants on a shuttle train which left Erode at 2-15 P.M. and arrived at Vanjipalayam at about 4 P.M. Then there is evidence that at Vanjipalayam the deceased was in the company of the appellants in a petty shop belonging to P.W. 8. A little later the two appellants drank toddy at a toddy-shop half a mile away. At about 7-30 P.M. P.Ws. 10 and 11 arrived by train at Somanur railway station. Together they started eastwards along the railway line to go to their villages. Having gone about a mile they saw two persons getting down from the railway track on its southern side. At this time P.W. 11 saw something black lying across the rails and drew his companion's attention to it. Immediately afterwards the Blue Mountain Express came past them and they found that what had appeared to them to be something black lying across the line was the dead body of a woman subsequently identified to be Muthayee. The body was naked and headless, the head being discovered about 60 feet away. A woman's cloth lay south of the line. They then ran after the two persons whom they had previously seen and these two persons began to run. P.Ws. 12 and 13 also pursued them and they were eventually caught at a level-crossing by P.Ws. 14 and 15. These two men were the appellants. They are said to have been tipsy at the time. An examination was made of the site and the land near by and marks of a struggle were discovered by the Sub-Inspector at D and D-1 on the plan where also was found M.O. 1, a thali string. This place is on the country road 9 1/2 feet below the line to the south and there were marks of something having been dragged towards the railway line. The prosecution case, therefore, was that the appellants intended to murder the deceased and that they decoyed her away to this spot and strangled her and then put her body across the railway line so that it could be run over by a passing train and thus the traces of strangulation on the deceased's body would be obliterated and death appear to be the result either of suicide or accident.

3. On the question of the murder of Muthayee by strangulation, in support there was evidence of P.W. 1, the Sub-Assistant Surgeon in charge of the Local Fund Dispensary at Palladam who conducted the post-mortem examination and in Ex. G, the post-mortem certificate, expressed it as his opinion that the death of the deceased was due to asphyxia. That being the medical opinion as to the cause of death, the prosecution case was death by strangulation and not by decapitation. There were, of course, no actual eye-witnesses to the crime and, therefore, as regards the cause of death the prosecution had to proceed on theory although prima facie the evidence of witnesses other that P.W. 1 would establish the case of murder by decapitation on the railway line. Having regard to the fact that the deceased woman's head was cut off at the neck, it seems to me that all objective signs of strangulation on that part of the woman's body, if there had been any, would have been obliterated by the decapitation. A different view of the cause of death was taken by Lieutenant-Colonel Fraser, I.M.S., who was examined as a Court witness as from the evidence of P.W. 1 it appeared that the death of the woman had probably been caused by decapitation - at least that witness's evidence appeared to the learned Sessions Judge to suggest that Lieutenant-Colonel Fraser stated as his definite view that the case that the deceased was first strangled to death and then decapitated by the train was inconsistent with the appearances described in Ex. G-1. The learned Sessions Judge came to the conclusion that it could be safely taken that the deceased woman was alive when she was run over by the Blue Mountain Express and therefore that the prosecution case that she had already been killed was incorrect.

4. The defence story that the deceased woman was killed by accident, namely, in rushing across from one side of the line to the other in front of the passing train cannot possibly be accepted and was rightly rejected by the learned Sessions Judge. It is opposed to the evidence of P.Ws. 10 and 11. It does not fit in with the marks of a struggle near the road nor with the discovery of the deceased's thali on that spot nor with the fact that the deceased's clothing had been removed before she got across the line. The defence story, however, does show that the two accused and the deceased woman were together at that spot and the accused have no explanation as to how the deceased's body got across the rails.

5. Turning to the medical evidence, it may be that P.W. 1's opinion expressed in the post-mortem certificate was correct and that the deceased was strangled. If that is so, of course the accused were guilty of murder, but, having regard to Lieutenant-Colonel Fraser's evidence which has been accepted by the learned Sessions Judge, the deceased did not die of strangulation but as a result of decapitation on the line. Accepting that position, what offence has been committed by the appellants? The learned Sessions Judge thinks that the appellants intended to murder the deceased and tried to do so by strangling her, that they did not succeed in killing her although they thought that they had done so and that, believing that she was already dead, they put her body across the line in order to hide the traces of the crime which they thought they had committed. It is perfectly clear that the appellants did intend to kill the deceased and that it was in pursuance of a deliberately planned transaction that she was taken to the spot where the marks of a struggle were; and it is beyond question of course that the deceased died as a result of the appellants' act. If, as the prosecution first thought, she was strangled by the appellants, then it was that act of the appellants which caused her death. If the case accepted by the learned Sessions Judge is correct, it was the act of the appellants in putting her body on the line which caused her death. The question before us is whether, on the case accepted in the Sessions Court, the appellants can escape a conviction on the murder charge. In this High Court the view has been taken by at least two Criminal Benches of which I was a member of both that, if persons intend to cause the death of another or others and do an act in furtherance of that intention, which act does not in fact cause the death of that person or the other persons, and in the belief that the act has caused death, those persons do another act, for example, for the purpose of hiding the traces of their crime, and such act results in death, the offenders cannot be convicted of murder but of some lesser offence. This view has been taken in consequence of a Full Bench decision of this High Court, namely, Palani Goundan v. Emperor I.L.R. (1919) Mad. 547 : (1919) 37 M.L.J. 17. There an accused struck his wife a blow on her head with a plough-share which, though not shown to be a blow likely to cause death, did in fact render her unconscious, and, believing her to be dead, in order to lay the foundation of a false defence of suicide by hanging, the accused hanged her on a beam by a rope and thereby caused her death by strangulation; and it was held by the Full Bench that the accused was not guilty of either murder or culpable homicide not amounting to murder. In view of this decision, in the two Criminal Bench cases referred to, no argument was addressed to the Bench that the offence was murder although in one of these cases my learned brother and I agreed with counsel for the appellant who had been convicted in the Sessions Court of murder that the offence of murder had not in the circumstances of that case been committed because an unconscious person believed to be dead through the act of the appellant was killed by the appellant's act in endeavouring to screen his offence. When the present case first came before us, it appeared to us to be necessary to consider whether in all such cases it is right to hold that the offenders are guilty of a lesser offence than murder

particularly so as it also appeared to us that Palani Goundan v. Emperor I.L.R. (1919) Mad. 547 : (1919) 37 M.L.J. 17 was distinguishable certainly from the present case. In that case it was not shown that the blow on the deceased's head with a plough-share was likely to cause death though it certainly rendered her unconscious and in the end, after the Full Bench decision, when the case came before the Division Bench, it resulted in the conviction of the appellant of grievous hurt under Section 326, Indian Penal Code, only. It must be observed also that of the two referring Judges Napier, J. was of the opinion that even on the facts of that case the accused was guilty of murder. In the course of his judgment he makes one observation at page 552 with which I entirely agree and it is:

Apart from the actual offence of concealing a murder, it is the grossest violation of natural rights to stab, shoot or hang a person without absolute knowledge that that person is dead unless of course it is done innocently, and I see no reason why the offender should not suffer the consequences of his act.

6. He then refers to Gour Gobindo Thakoor (1866) 6 W.R. (Cr. R.) 55. There one Gour Gobindo struck the deceased a blow which knocked him down and then he and others without inquiry as to whether he was dead or not, in haste hung him up to a tree so as to make it appear that he committed suicide. The accused were all convicted of hurt, but the High Court quashed the proceedings and directed the accused to be re-tried on charges of murder, culpable homicide not amounting to murder and hurt. Seton-Karr, J. says:

If, however, the deceased was not actually killed by the blow, but was killed by the suspension, then Gour Gobindo himself, and also all the other Thakoors who took part in hanging him up to the tree, would be clearly liable to a charge of culpable homicide amounting to murder; for, without having ascertained that he was actually dead, and, under the impression that he was only stunned, they must have done the act with the intention of causing death, or bodily injury likely to cause death, and without the exceptions provided by the law; or they might have been committed for culpable homicide not amounting to murder.

7. The next case to which reference is made by Napier, J. is Queen-Empress v. Khandu valad Bhavani I.L.R. (1890) Bom. 194. In that case it was found that the accused struck the deceased three blows on the head with a stick with the intention of killing him. The accused, believing him to be dead, set fire to the hut in which he was lying with a view to remove all evidence of the crime. The medical evidence showed that the blows were not likely to cause death and did not cause death and that death was really caused by injuries from burning. The Bombay High Court was of the opinion that the offence committed was attempt to murder and not murder. In this view the Judges were not unanimous. Parsons, J. took the view that the whole transaction, the blow and the burning, must be treated as one and that therefore the original intention to cause death applied to the act of burning which did cause death. With this view Napier, J. agreed - and for reasons which I will presently state I do also - and expressed the opinion that Queen-Empress v. Khandu valad Bhavani I.L.R. (1890) Bom. 194 was wrongly decided. Another case referred to in the judgment of Napier, J. is The Emperor v. Dalu Sardar 18 C.W.N. 1279. There the accused assaulted his wife by kicking her below the navel. She fell down and became unconscious. In order to create an appearance that the woman had committed suicide, he took up the unconscious body and, thinking it to be a dead body, hung it by a rope. The post-mortem examination showed that death was due to hanging. The Court held that as

the accused thought it to be a dead body he could not have intended to kill her; if he thought that the woman was already dead, the offence was not murder. Sadasiva Aiyar, J., the other referring Judge, considers the latter case correctly decided and is of the opinion that the intention in Section 299, Indian Penal Code, 'to cause such bodily injury as is likely to cause death' cannot mean anything except 'bodily injury' to a living human body. When the case came before the Full Bench, the Public Prosecutor did not contend that the facts as found by the referring Judges constituted the offence of murder or even culpable homicide. The Full Bench, however, gave an opinion upon the matter and Wallis, C.J. in his judgment says:

The conclusion is irresistible that the intention of the accused must be judged not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances. It follows that a man is not guilty of culpable homicide if his intention was directed only to what he believed to be a lifeless body. Complications may arise when it is arguable that the two acts of the accused should be treated as being really one transaction as in Queen-Empress v. Khandu I.L.R. (1890) 15 Bom. 194 or when the facts suggest a doubt whether there may not be imputed to the accused a reckless indifference and ignorance as to whether the body he handled was alive or dead, as in Gour Gobindo's case (1866) 6 W.R. (Cr. R.) 55. The facts as found here eliminate both these possibilities, and are practically the same as those found in The Emperor v. Dalu Sardar (1919) Mad. 547 : (1919) 37 M.L.J. 17(F.B.).

8. It is clear, therefore, that the Full Bench distinguish the two former cases from the case which was before them and seem to indicate an opinion that in these cases the offence, committed might have been murder. In my opinion, we are therefore free to consider the present case, which is, in my opinion, as near a case as could be found to The Queen-Empress v. Khandu I.L.R. (1890) Bom. 194 as not being covered by the decision in Palani Goundan v. Emperor I.L.R. (1919) Mad. 547 : (1919) 37 M.L.J. 17(F.B.). Accordingly I will refer again to The Queen-Empress v. Khandu I.L.R. (1890) Bom. 194. In that case the accused confessed to having struck his father-in-law, the deceased, three blows with a stick, one on the back and one on each ear. The injured man immediately fell down on the ground and the accused said that he died. The accused then set fire to the hut. It was found that the deceased man died from the burns received and that the blows struck by the accused were not likely to cause; death and did not do so. Sargent, C.J., to whom the case was referred owing to a difference of opinion between Birdwood and Parsons, JJ., held that as the accused had not intended to cause the death of the deceased by setting fire to the shed but had only done so after he thought that the deceased was dead, the act of setting fire to the shed by which the death was caused was not done with such intent or knowledge as is contemplated in Section 299, Indian Penal Code. Parsons, J. took a different view. On page 200 he says:

It is true that the accused says that immediately after he dealt the three blows, his father-in-law died and fell down on the ground, but he does not say that he in any way satisfied himself that he was actually dead or even that he thought that he was dead, still less does he say that his intention in setling fire to the hut was to conceal his crime. He does not say what his intention was. This being so, I think the presumption of law is that in all that he did he was actuated throughout by one and the same intention. There is no evidence or proof of any change therein. There is then the intention of the accused to cause death and there are two acts committed by him which together have caused death - acts so closely following upon and so intimately connected with each other that they cannot be separated and assigned the one to one

intention and the other to another, but must both be ascribed to the original intention which prompted the commission of those acts and without which neither would have been done. In my opinion, the accused in committing those acts is guilty of murder.

9. In my view, Parsons, J. was right. If the intention is to kill and a killing results, the accused succeed in doing that which they intended to do and if the acts follow closely upon one another and are intimately connected with one another such as they were in the Bombay case, then in my opinion the offence of murder has been committed. Similarly when the facts suggest that the accused acted with a reckless indifference and ignorance as to whether the body he handled was alive or dead. It is only right also to say that in the present case, unlike the other cases referred to, there is no evidence of what the acts of the appellants were at the place where there were marks of a struggle beyond the fact that it is likely that a struggle took place there. In all the other cases the act which the accused thought had caused the death of the murdered person was proved either by the accused's own statement or by the evidence of eye-witnesses. Here it has not been shown that the appellants thought that the deceased woman was dead when they put her body across the rails. It is not the appellants' case that they thought so and the Court is merely asked to infer that they did so because there were marks of a struggle and signs of an attempt at strangulation both of which are quite consistent also with the alternative that the appellants merely intended to make the woman unconscious in order to make it easy for them to put her body on the line, or another alternative that they did not know or care whether she was dead or not and put her body across the line. There is also another alternative which presents itself, namely, that the woman's body was put across the line in order to finish her off. When the Court has facts before it such as in this case that the appellants deliberately put the woman's body across the line and that she was killed by a passing train, then it certainly seems to me that very much stronger facts are required than there are present in this case to prove the case which has been accepted in the Sessions Court. In the absence of such proof, I will go so far as to say that no proof of that case is to be found and it was not the case put forward by the appellants. Even assuming the case to be as accepted by the learned Sessions Judge, I am strongly of the opinion that the offence committed was murder. In support of my view, in addition to the view expressed by Parsons, J. in Queen-Empress v. Khandu valad Bhavani I.L.R. (1890) Bom. 194 there is a decision of the Allahabad High Court, namely, Emperor v. Khubi (1924) 25 Cr. L.J.R. 703. There the accused, a full grown man, beat his child wife, an invalid and weak girl, so recklessly with a lathi that he thought he had killed her. He then threw her down a dry well 33 feet deep, an act which, if she was not already dead, must inevitably have killed her. He was convicted in the Sessions Court under Section 304, Indian Penal Code and it was held however by Walsh and Ryves, J.J. in the High Court that the accused was probably guilty of an offence under Section 302, Indian Penal Code. Walsh, J. in the course of his judgment expresses the opinion that the difference of opinion in Queen-Empress v. Khandu valad Bhavani I.L.R. (1890) Bom. 194 between Parsons, J. and the majority of the Bench was a difference of fact and not of law. Later on he states:

His subsequent conduct indicates that he felt no surprise and showed no remorse. Instead of going to his friends or her friends or anybody in authority to explain this accident which he had brought about, if it was an accident - though in ray opinion he must be taken within the meaning of the Code to have known quite well that what he was doing was likely to cause her death, he surreptitiously by night carried what he thought was her dead body and threw it down a well leaving it there presumably in the hope of covering up the traces of enquiry. I am by no means satisfied with the

inference drawn by the learned Judge, which I think is too merciful and too improbable that he really thought that she was dead. I think he must have known when he was carrying the body that she was still alive; but in either case in the peculiar circumstances of his conduct, it seems to me to make no difference. He either beat her till she was dead or he beat her until her chances of recovery were slight and finished her off' by throwing her down a dry well 33 feet deep. If I had tried him, he would have been convicted under Section 302, Indian Penal Code and sentenced to death.

10. And later:

To sum up my reason, it is this, that one common intention of inflicting such injuries upon her as he must have known to be likely to cause her death is present throughout the case from the beginning to the end, and if this is the case I agree with Mr. Justice Parsons in his view of the facts in the Bombay case.

11. Ryves, J. agrees with Walsh, J. There is also a decision of the Lahore High Court, viz., Emperor v. Gajjan Singh (1931) 32 Cr. L.J.R. 483. There the accused struck the deceased two or three times on the head and when the latter fell down unconscious threw him face downwards into a pool containing a few inches of water, removed the contents of his pockets and covered the body with the branches of a tree. Later on the accused carried the body of the deceased in a dhoti and threw it into a canal. The Sessions Judge held that the offence of murder had not been made out and convicted the accused under Sections 325 and 379, Indian Penal Code. On appeal it was held that the action being continuous and it being impossible to resolve the two incidents into two wholly separate actions, inspired by different motives and committed for different reasons, the accused must be treated as having done one act with the intention of causing death and as having succeeded in carrying out his object and he was therefore guilty of murder. The learned Judges in that case in dealing with the act proved to have been committed by the accused observe that

the one thing that can be said with positive certainty is that, after he had lain face downwards in the pool of water for some hours, and before he was removed to the canal, Bagwan Das was dead. There is another difference between this case and the facts of the two authorities relied upon, Queen-Empress v. Khandu I.L.R. (1890) Bom. 194 and In re Palani Goundan (1919) Mad. 547 : (1919) 37 M.L.J. 17, and that is that there was no definite break in the events of the first two chapters. The incidents ran into each other and the action was continuous. The accused struck Bagwan Das and, as soon as he fell, he removed him and put him into the pool and, after taking what money there was on him, covered him with the branches of the ak bush. The action being continuous etc.

12. To sum up this case : (1) an intention to kill Muthayee was clearly proved; (2) that it was in pursuance of a deliberate plan; (3) that the appellants placed Muthayee's body across the railway line; (4) that it was that act which caused her death; (5) the appellants have not put forward the case that they believed Muthayee to be dead when they put her body across the line; (6) the marks of a struggle and the body being dragged and the discovery of the woman's thali at that spot prove nothing more than a struggle and (7) there is some slight medical evidence re marks of strangulation. This, however, was not the cause of Muthayee's death. The conclusions I arrive at from the before-mentioned facts are that the appellants had a struggle with the deceased woman during which her thali fell off or was removed, that an attempt

may have been made to strangle her, that she was immediately dragged either in an unconscious or semi-conscious condition on to the railway line and placed in front of the train, the intention throughout being to kill Muthayee, that the intention with which the accused struggled with Muthayee cannot be separated from the intention with which they put her body across the line, that the two acts were intimately connected with each other and the latter act followed immediately upon the former, that both the acts of the appellants must be treated as being only one transaction, the transaction being to kill Muthayee, and that the most favourable inference that could possibly be drawn in favour of the appellants is that they acted with a reckless indifference and ignorance as to whether Muthayee was alive or dead. Even this inference, in my view, is not such a reasonable one as the former but it is the most favourable one which could be drawn. All this leads me to one conclusion and one conclusion only, namely, that the appellants were guilty of the offence of murder. They have been acquitted on that charge in the Sessions Court. The question is whether we should interfere with that acquittal. I am clearly of the opinion that we should do so firstly because the learned Judge's view of the legal position is incorrect and secondly because I can see nothing which could reasonably justify the learned Sessions Judge in drawing the inference that the appellants thought that Muthayee was dead when they placed her body on the railway line. It seems to me to be a pure guess and nothing more. There is evidence that the appellants were tipsy when they were arrested. They cannot have been so drunk as not to know what they were doing because they dragged Muthayee on to the line, put her body across the line in such a way that her neck lay across the rails and then ran away. The probability is, as the evidence shows, that they took some drink before the occurrence in order to screw themselves up to the necessary pitch for the performance of the murder. In my opinion, the acquittal of the appellants on the charge of murder must be set aside and the appellants must be convicted of the offence of murder. As regards the sentence, the murder was a deliberately planned one and a very cruel one. There are no mitigating circumstances whatever and no reason for not inflicting the ordinary sentence -1 which the law requires, that is to say, the sentence of death.

Bardswell, J.

13. I agree.

14. The sentence of the Court is that the two accused be hang-ed by the neck until they are dead.