

Madras High Court

In Re: Vodde Nagappa And Ors. vs Unknown on 8 July, 1947

Equivalent citations: (1947) 2 MLJ 295

Author: Y Ali

ORDER Yaha Ali, J.

1. The Sessions Judge of Kurnool has convicted accused 1, 2 and 3 before him acquitting the remaining four accused who were tried for various offences. The first accused-appellant was convicted under Section 364 of the Indian Penal Code, and sentenced to five years' rigorous imprisonment and under Section 201 of the Indian Penal Code he was further convicted and sentenced to a concurrent period of five years' rigorous imprisonment. The second and third accused were convicted under Section 201 of the Indian Penal Code and sentenced to two years' rigorous imprisonment each. In the view I have taken of the case, I have taken up the case so far as the second and third accused also are concerned though they have not preferred any appeal against their convictions and sentences and I do not consider it necessary to direct notice in view of the order I propose to make.

2. It is not necessary to set out the facts of the case and the evidence. It appears from the judgment that the conviction of the appellant was based exclusively upon his confessional statement, Ex. P-5. In that statement he is said to have implicated himself as the person who decoyed Nagi Reddi (the deceased) to the rickyard and assisted in the murder of Nagi Reddi by holding the legs and that after the murder he and others carried the dead body and buried it in the burial ground. The learned Judge points out in paragraph 18 of the judgment that the conviction of this appellant is based in respect of practically all the charges on this confessional statement. I have seen the confessional statement and having regard to the recent Privy Council decision in Pulukuri Kottayya v. The King-Emperor (1947) 1 M.L.J. 219 : L.R. 74 I.A. 65 (P.C.), practically the entire confessional statement will have to be excluded from the evidence except that portion in which it is stated that the body was buried at a particular place and that by itself does not in any manner incriminate either the appellant or the accused 2 and 3. In addition to that, there are some circumstances mentioned by the learned Judge but none of them establishes any connection between the appellant and the occurrence.

3. With regard to accused 2 and 3, the convictions of both of them are based exclusively on the confession of the first appellant as a co-accused. When the confession of the original confessor goes out, there is no legal basis whatever to sustain the conviction of the other two accused.

4. The appeal is allowed and the conviction and sentence of the appellant are set aside. The conviction and sentence of accused 2 and 3 Boya Sankanna alias Erranna and Madiga Mookanna alias Ghinna Hamumanna are also set aside and they are acquitted and directed to be set at liberty forthwith.