

(1947) 08 MAD CK 0017
In the Madras High Court

In Re: Ravipudi Venkanna and Others

Date of Decision : 26-08-1947

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 454

Citation : AIR 1948 Mad 261 : (1947) 2 MLJ 356

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—There were five accused in this case. They were convicted by the Additional First Class Magistrate, Bapatla, under Sections

454 and 380 of the Indian Penal Code and sentenced to four months rigorous imprisonment and also fined Rs. 100 each under each of the counts.

The convictions were confirmed by the Sessions Judge, Guntur, on appeal. The fourth accused has not preferred a revision against the order of the

appellate Judge. The revision case filed by accused 1 to 3 is Cr. R. C. No. 635 of 1946 and the case filed by the fifth accused is Cr. R. C. No.

636 of 1946. The convictions of the petitioners rested mainly on confessional statements made by the petitioners and on the evidence relating to

the identification of the property which was discovered in pursuance of that confession. The property consisted of currency notes and ornaments.

Applying the principle laid down by the Privy Council in Pudukuri Kotayya v. King Emperor . all the four confessional statements have to be in toto

excluded from the evidence except to the extent to which it was mentioned therein that the respective confessors stated that they would produce

the property. Their Lordships pointed out in that judgment that such a statement leads to the discovery of the fact that the property is concealed in

the house mentioned to the knowledge of the person making the confession ,and if the property is proved to have been connected with the offence

the fact discovered would become relevant. Here as a result of the information said to have been given by accused I, 3 and 5 some currency notes alone were found ; no jewels were found. While with regard to the currency notes found on the information given by accused 1 and 3 it is to be pointed out that they could not possibly be identified, it has to be mentioned with reference to the currency notes found in pursuance of information given by accused 5 that they were found wrapped in a bag which bore the initials of K.M.L. which are the initials of P. W. 1. The bag has been identified by P.Ws. 1 and 2 and they stated that they kept the currency notes in that bag. This evidence is sufficient, in my opinion, to establish the identity of the stolen property. Next with regard to the second accused in pursuance of the information given by him jewels were found in his sister's house. It is not established by any admissible evidence that the second accused had anything to do with that house. All that the circumstances of the discovery of the jewels, assuming it to be stolen property, establish is that the second accused was aware of the fact of the concealment of those jewels in his sister's house. That is the utmost the evidence can be said to have established against the second accused but that is not by any means sufficient even with the aid of the presumption u/s 114 of the Evidence Act to establish that the second accused was guilty of an offence under Sections 454 and 380 of the Indian Penal Code or even alternatively u/s 411 of the Indian Penal Code.

2. The result is that in CrI.R.C. No. 635 of 1946, none of the accused can be held on legal admissible evidence to have been proved to have committed an offence under Sections 454 and 380 of the Indian Penal Code. Their conviction and sentence must therefore be set aside and the fine levied on them if paid should be refunded. In CrI.R.C. No. 636 of 1946 which is the petition filed by the fifth accused I have already held that he was found to be in possession, to his knowledge, of currency notes wrapped in a bag which was identified as the property stolen from the complainant's house. Here is a case where a presumption u/s 114 would apply and the fifth accused must be held to be guilty of having committed an offence either u/s 454, 380 or 411 of the Indian Penal Code. His conviction and sentence are confirmed and CrI.R.C. No. 636 of 1946 is dismissed.