

APPELLATE JURISDICTION (a)

*Criminal Petition No 152 of 1866.*THE QUEEN *against* SUBBRAMÁNYA PILLAI.

Prisoner was charged under Section 201 of the Penal Code for that he knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false.

Held, that the proper order of proof on the part of the prosecution in the present case, was to prove, (1) that A. N. was murdered; (2) that the prisoner gave information respecting the offence; (3) that such information was false and known by him to be so; (4) that he then knew of the commission of the murder; and (5) that his intention was to screen the murderer.

Held also that it was essential to the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner.

Further enquiry directed under Section 422, Criminal Procedure Code.

THIS was a petition against the sentence of F. S. Child, the Session Judge of Tinnevely, in Case No. 60 of the Calendar for 1866.

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The prisoner was charged under Sec. 201 of the Penal Code, "for that he, on or about the 6th September 1865, knowing that a capital offence had been committed, did, with the intention of screening the offender from legal punishment, give information respecting the offence which he knew to be false." It would appear that in a former criminal case before the same Court, No. 104 of 1865, one Shanmugham Palli was tried for and convicted of having murdered one Ayalu Nayakkan, on or about the 25th August 1865 [the record of the conviction in that case was not put in evidence in the present trial]. The material part of the evidence against the prisoner in the present trial was:—

1st Witness. "I remember seeing prisoner in Strivigandam on the 5th of September. He came to my house. He came with Shanmugham Pillai who was hanged for the murder of Ayalu Nayakkan. Prisoner said that he had been to Tuticorin, where he saw Ayalu Nayakkan (deceased), who said he was going to Colombo for two months..... The idea he gave me was that he had seen Ayalu Nayakkan a few days, ten or twelve, before, at Tuticorin."

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2nd Witness. "I have known the prisoner for a long time. I remember seeing him in September in last witness' house. Shanmugham Pillai was with him. They just said they had come from Tuticorin.....I heard Shanmugham say so, and then prisoner said it was true." It was then attempted, on the part of the prosecution, to show that the prisoner had been at Strivigundam on or about the day on which he said he had met the deceased at Tuticorin (36 miles away), but the evidence on this point was very vague, the witnesses merely speaking to having seen him at Strivignadam in September. Prisoner in his defence before the Session Court, amongst other things, showed that the first witness, in his deposition given before the Deputy Magistrate, had stated—"that we told him, Ayalu Nayakkan told us in our house he was going to Colombo. Nor that we saw him in Tuticorin."

The assessors convicted the prisoner and the Judge, concurring with them, sentenced him to seven years' transportation.

The prisoner appealed.

Gordon for the Prisoner.

The Court made the following

Order :—The prisoner in this case was charged under Section 201 of the Penal Code. The charge involved the allegations that he knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false. Now the proper order of proof on the part of the prosecution in the present case, was to prove, (1) that Ayalu Nayakkan was murdered, and that this was on or about the 25th August 1865; (2) that the prisoner on the 5th September 1865 gave information respecting this offence; (3) that such information was false and known by him to be so; (4) that he then knew of the commission of the murder; and (5) that his intention was to screen the murderer.

The 5th, and probably also the 4th point for proof, would, in almost every case of this kind, have to be left to be inferred from the circumstances of the case ; but the 1st and the 3rd point admitted of direct evidence being adduced in support of them, and such evidence ought strictly speaking to have been adduced by the prosecution in the present case. The prisoner was not concerned in Calendar Case No. 104 of 1865, and nothing that was proved in that case, and no knowledge derived from that case could be used against him ; though of course the record of the conviction of Shanmugham Pillai in that case, would, if duly put in evidence, as it should have been, in the present case, have proved that Shaumugham Pillai was tried for and convicted of the murder of Ayalu Nayakkan. The evidence at the trial was almost entirely confined to the 2nd point, viz., that the prisoner gave the information regarding Ayalu Nayakkan having been at Tuticorin. Now after the indefinite evidence given by the 1st witness at the trial that his *impression* was that the prisoner meant that he had seen Ayalu Nayakkan at Tuticorin 10 or 12 days before the 5th September, it was essential for the prosecution to have gone on to show that this information was false. Thus there is no evidence what is the distance of Tuticorin from the place where Ayalu Nayakkan was murdered, and for anything that appears to the contrary it might be the case that Ayalu Nayakkan really was at Tuticorin on the 23rd or 24th August, and if so, it would be scarcely inaccurate, and much less could be treated as clearly wilfully false information, to speak of his having been seen there 10 or 12 days before the 5th September. The proper course for the prosecution was, after having shown when Ayalu Nayakkan was murdered, to have accounted for him during a sufficient number of days prior to the 25th August, so as to show that the prisoner's information must have been false. It is true that the prisoner at the trial rested his defence mainly, if not entirely, on a denial of the allegation that he gave the information, but it was essential to the completeness of the case for the prosecution to show not only that the information was given, but also that it was false. We think it therefore a proper case in which, under Section 422, Criminal Procedure Code,

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to direct that further enquiry be made and additional evidence be taken upon the point, whether the information alleged to have been given by the prisoner that he had seen Ayalu Nayakkan at Tuticorin 10 or 12 days prior to the 5th September 1865 was false information.

The Court of Session will certify to this Court the result of such further enquiry and the additional evidence received.

We must also point out that the letter written by the 1st witness upon receiving the information, and which was filed as Exhibit A in Calendar No. 104 of 1865, was not duly put in evidence as it should have been at the present trial.

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Criminal Petition No. 160 of 1866.

Ex parte KARAKA NÁCHÍÁR *alias* VELLIA NÁCHÍÁR.

On an application to the High Court, as a Court of revision, to discharge an order made by a Session Judge, under Sec. 435, Criminal Procedure Code, for the commitment of certain accused persons for trial on a charge of dacoity.

Held, that as all that was done was done under a claim of right in good faith entertained by the accused, however erroneously, the charge could not be sustained.

The order of the Session Judge annulled.

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THIS was a petition against the order of R. R. Cotton, the Session Judge of Madura, dated the 27th September 1866, in, Case No. 95 of 1866.

The Petitioner was originally charged under Sections 143 and 447 of the Indian Penal Code, it being alleged that pending a dispute between her and one Udayappa Setti, concerning the melwaram of the Village of Padamattur, she caused her servants to remove the produce. The Magistrate considered the proper remedy to be by civil suit, and accordingly dismissed the criminal charge. The Sessions Judge, on a petition, directed the Magistrate to commit the Petitioner to the Sessions Court on the charge of abetting dacoity.

(a) Present : Collett and Ellis, J. J.