

[COURT OF CRIMINAL APPEAL.]

1944

Present: Howard C.J., Cannon and Jayatileke JJ.THE KING *v.* J. M. APPUHAMY.56—*M. C. Badulla, 11,019.**Court of Criminal Appeal—Charge of Murder—Circumstantial evidence—Verdict against the weight of evidence.*

The accused was convicted of murder by a majority of five to two. The case against him was based on circumstantial evidence. A vital question in the case was whether, at a certain point of time, the accused was seen carrying in his hands a curved katty, like P 2, which was produced in evidence and which was found with bloodstains on it in the loft of the accused's kitchen on the day after the deceased was murdered. The two principal witnesses for the prosecution both stated at the trial that the accused was carrying a katty like P 2. In the Magistrate's Court both of them said that he carried something in his hand which they were not able to identify. It also transpired at the trial that according to the note made by the Village Headman in his diary neither of these witnesses mentioned the fact that the accused was carrying a katty.

Held, that the jury should have had a reasonable doubt as to whether the two witnesses saw a katty and that the benefit of that doubt should have been given to the accused.

THIS was an application for leave to appeal against a conviction by a Judge and Jury before the Second Midland Circuit, 1944.

M. M. Kumarakulasingham for the applicant.

E. H. T. Gunasekara, C.C., for the Crown.

Cur. adv. vult.

December 20, 1944. HOWARD C.J.—

The accused was convicted of murder by a majority verdict of five to two. No complaint has been made by Counsel for the accused with

regard to the charge of the learned Judge. It has, however, been contended that the verdict of the majority of the jury is unreasonable and, having regard to the evidence, cannot be supported. The deceased met with her death on April 30, 1944, in a most brutal manner. The post-mortem examination revealed numerous injuries on the head and neck. Several arteries of the neck had been severed. In the opinion of the District Medical Officer, Badulla, one of the injuries was caused by a katty, like P 2, which was produced in evidence. P 2 had a curved blade and was very sharp. The case against the accused rested on the evidence of three witnesses and the finding by the Police at 9 A.M. on May 1 of the katty (P 2) with bloodstains on it in the loft of the accused's kitchen. Muttu Banda stated that about noon he was with another man named Sudu Banda on a footpath skirting the jungle and leading to the houses of the accused and the deceased woman. He heard a woman's cries "Here I am being killed". He continued to go forward and says that he saw the accused hurrying away from the direction of the cries with a katty in his hand and turning from the direction in which he was going into the jungle. The handle of the katty was like P 2. He then went on to an enclosure belonging to Tissa Hamy, the father of the deceased with whom she lived, and found her dead body with the neck cut and injuries on the head. Sometime later, about 3 P.M., he met Tissa Hamy and told him what he had seen. He then went to inform the Headman. The testimony of Muttu Banda is corroborated by that of Sudu Banda. This witness made a statement to the Headman on the same day. Another man called Siyatu also testified to the fact that about noon he was on Palawatta in the house of Kalu Banda, which is next door to the house of the accused, when he saw the accused going in the direction of his house with a katty in his hand. A short time after he reached his house the accused, according to the evidence of this witness, called to him to pluck some arecanuts. The witness refused and then proceeded, on the invitation of the accused, to share his midday meal with him. Siyatu then plucked some nuts for him. Siyatu says he knew nothing about the death of the deceased and it was not until the following day that he told a constable what he saw.

The testimony of Muttu Banda, Sudu Banda, Siyatu and the finding of the blood-stained katty in the loft, though of a circumstantial character is if believed sufficient to establish the guilt of the accused beyond reasonable doubt. The only question, therefore, that arises is whether it was reasonable for the majority of the jury to have accepted the evidence of these three witnesses. Muttu Banda and Sudu Banda at the trial both stated that the accused was carrying a long handled katty like P 2. In the Magistrate's Court both of them said that he carried something in his hand which they were not able to identify. It also transpired at the trial that according to the note made by the Village Headman in his diary neither of these witnesses mentioned the fact that the accused was carrying a katty. The case against the accused was completed by the finding of the katty in the loft. If, however, there is a reasonable doubt as to whether Muttu Banda and Sudu Banda saw such a weapon in the hands of the accused, one of the vital links in the chain of circumstances is broken. In the opinion of the majority of us the jury should

have had a reasonable doubt as to whether these two witnesses saw a katty. The benefit of that doubt should have been given to the accused. In connection with the finding of the katty in the loft, it has also to be borne in mind that it was not found by the Village Headman when he arrested the accused at his house on the day of the crime. It was only found by the Police at 9 A.M. on the following morning. There is, therefore, a possibility that it was introduced after the accused had been taken away.

A careful scrutiny of the charge of the learned Judge indicates that in his opinion the evidence was not of such a character as to justify a conviction. The majority of us share that opinion and consider that there was a reasonable and substantial amount of doubt as to the guilt of the accused and that he was entitled to the benefit of that doubt.

We accordingly set aside the conviction and acquit the accused.

Conviction set aside.
