

**Emperor Vs. Manchankhan**

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**Court :** Mumbai

**Decided On :** Sep-28-1923

**Reported in :** (1932)34BOMLR1087

**Judge :** Fawcett, J.

**Appeal No. :** Case No. 14 of 1923

**Appellant :** Emperor

**Respondent :** Manchankhan

**Judgement :**

**Fawcett, J.**

1. In my opinion the latter objected to is admissible under Section 8 of the Indian Evidence Act as containing statements which accompany and explain the conduct of the deceased (i.e., a person an offence against whom is the subject of this proceeding) in petitioning the Commissioner of Police for police protection against apprehended acts of or on behalf of accused No. 2, such conduct being influenced by a fact in issue (viz., accused No. 2's alleged intention to cause deceased's death, cf. Section 5, ill (a)) and a relevant fact (viz., accused No. 2's alleged ill-will towards deceased constituting a motive for accused No. 2's alleged complicity in the stabbing of deceased).

2. Even accepting the view laid down in Queen-Empress v. Abdullah I.L.R. (1885) All. 385, that the conduct in question must directly and immediately influence, or be influenced, by a fact in issue or relevant fact, it is clear that the condition is satisfied. The letter shows it was written as the direct consequence of the alleged ill-will of accused No. 2 towards deceased and of deceased's fear that he might be assaulted.

3. No doubt the act of petitioning the Commissioner does not of itself directly show that the alleged ill-will actually existed ; it shows, however, that deceased had quarrelled with accused No. 2 and believed there was this ill-will, and consequent danger to himself, and (though he might be under a delusion) still his belief and his action due to it are facts which support an inference suggested by a relevant fact, (viz, the alleged quarrel between the deceased and accused No. 2) so as to be itself relevant under Sections 9 and 14 of the Indian Evidence Act.

4. Deceased's belief and apprehension is also relevant as supporting the evidence of Chhotalal that deceased was frightened when he saw accused No. 2 in the lane and retreated(Sections 6, 9 and 11).

5. I feel no doubt, therefore, that evidence of the deceased's conduct in question is admissible under Section 8, and I understood Mr. Wadia for accused No. 2 eventually to admit this, and to confine his objection to the admissibility of the letter itself, on the ground that the actual statements of deceased in the matter (apart from his act in petitioning the Commissioner of Police of which separate evidence could be given) could only be admitted, if they fell under Section 32, which admittedly they do not.

6. I have carefully considered this question but have come to the clear conclusion that the terms of the letter are admissible under Section 8.

7. Explanation 1 shows that statements that 'accompany and explain acts other than statements' are included in the word 'conduct' and so are themselves admissible under this section. Thus ills, (j) and (7c) to the section show that the terms of a complaint made by the victim of an offence are admissible. If deceased's act in petitioning the Commissioner is 'conduct' relevant under Section

8(as I have held it to be), the terms of his petition are equally relevant by virtue of Explanation 1 to that section. As Petheram C.J, says in Queen-Empress v. Abdullah (p. 395) :-

Explanation 1 of Section 8 points to a case in which a person whose conduct is in dispute mixes up together actions and statements ; and in such a case those actions and statements may be proved as a whole.

Here the deceased's acts in going to Messrs. Crawford, Bayley & Co. and getting them to write a letter for him to the Commissioner of Police are mixed up with the statements he made, or authorised them to make, to the Commissioner of Police ; and the section lets them all in.

8. Mr. Wadia's contention is really based on the fallacy that the Indian law is practically the same as the English law regarding the admissibility of 'hearsay evidence', and that a 32 constitutes the only case in which statements by a deceased person can be put in evidence. The Indian Evidence Act follows a different method, as is pointed out by Mahmood J. in Queen-Empress v. Abdullah I.L.R. (1885) 7 All 385, F. B.; and Sections 13 and 18 to 21 may be cited as other cases where statements by deceased persons are admissible, apart from Section 82.

9. I accept the view taken in Woodroffe and Ameer Ali's Law of Evidence in British India, 6th Edn., p, 145, that the statements must really explain the acts they accompany ; but this condition is plainly satisfied in this case. Also the petition was made to some one in authority and is analogous to the case of a complaint.

10. Mr. Wadia referred to Explanation 2 to Section 8, as supporting his contention, but inasmuch as statements by the person whose 'conduct' is in question are already dealt with in Explanation 1, these are naturally outside the scope of Explanation 2.

11. I, therefore, hold that the letter to the Commissioner of Police (if duly proved) is admissible in evidence; but I shall of course warn the jury in my summing up that it is primarily admitted as accompanying and explanatory of deceased's conduct in

petitioning the Commissioner of Police, and as to the caution required in considering the truth of the various allegations against accused No. 2 contained therein.

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