

In Re: Bora Narasimhulu

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Court : Chennai

Decided On : Feb-12-1951

Reported in : AIR1952Mad165; (1951)1MLJ478

Judge : Govinda Menon and ;Chandra Reddi, JJ.

Acts : [Evidence Act, 1872](#) - Sections 33

Appeal No. : Referred Trial No. 141 and Criminal Appeal No. 876 of 1950

Appellant : In Re: Bora Narasimhulu

Advocate for Pet/Ap. : K. Narayanaswami Mudaliar, Adv.;Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Chandra Reddi, J.

1. After stating the facts and the plea of the accused, the Judgment proceeds as follows:.) Rejecting this theory and accepting the prosecution case 'in toto' the learned Sessions Judge found the appellant guilty of the offences, of murder and sentenced him to death.

2. The prosecution case rests mainly on the evidence of the boy Pydireddi who was the only Inmate of the house at the time of the occurrence. He was examined

at the time of the preliminary enquiry but subsequently he could not be traced in spite of the diligent searches made by the concerned police authorities, P.W. 1, the aunt of the boy, stated that he was staying with her subsequent to the death of his parents and suddenly disappeared one day from the house when she had taken ill. P.Ws. 2 to 4 the police officers deposed that they searched for the boy at all places where he was likely to be found, in vain. They could not trace him either in the East Godavari district or in the Visakhapatnam district. In these circumstances, the Sessions Judge had to admit the evidence of the boy given in the preliminary enquiry under Section 33 of the Evidence Act. This is marked as Ex. P. 8 in the case. We are satisfied that every possible effort was made to trace Pydireddi and that he could not be found. The Sessions Judge was therefore right in having marked his deposition in the preliminary enquiry under Section 33 of the Evidence Act. The relevant portion of Ex. P. 8, is as follows:

'On the night of the date of death we all took our supper. I slept at the gate. Father slept on a cot in the front yard. My mother cleaned pots, etc., went into the house and came out. I was awake then. Accused came from the roadside. He pierced my mother with a sword on her upper arm first. I did not get in. Next he pierced on the chest. She fell down on her back trying 'Ammo, Ammo' My father got up at once and caught hold of the accused's hair. He asked him 'why did you pierce'? Then he pierced on a side of my father's chest with the sword and rent it. My father fell aside crying 'Ammo.'. You have killed me.' Accused also rent on his stomach with the sword. He also fell on my father's side. Karri Venkanna and Dokkall Bangarayya came by this time. I and Bangarayya went to the clerk's house in Oduvari street. I, Bangarayya and the clerk then went to the police station and gave a report. I told Bangarayya and the clerk how the accused stabbed my father and mother.'

The evidence of this boy, if accepted, would prove the guilt of the appellant beyond all reasonable doubt. There is nothing to suggest that the boy was speaking to something that he had not witnessed. Nor is there any motive for boy to give false evidence against the appellant. It may also be mentioned that immediately after the occurrence when P.W. 12, rushed to the spot on hearing the cries of the boy, the boy mentioned to the former that it was the appellant that had

stabbed both his parents and stabbed himself.

3. Mr. Narayanaswami, learned Counsel for the appellant urged that it is not safe to act on Ex.P. 8 inasmuch as the appellant did not have an opportunity of cross-examining the witness effectively. Section 33 of the Evidence Act makes a statement made by a witness in a judicial proceeding admissible in a subsequent judicial proceeding or at some stage of the same judicial proceeding provided the person against whom it is sought to be used had a right and opportunity of cross-examining the witness. In this case it could not be said that the appellant had no right or opportunity to cross-examine Pydireddi. It may be that the appellant was not represented by a counsel to effectually cross-examine the witness as contended for by Mr. Narayanaswami. What is contemplated under Section 33 is an opportunity and not an effective use of it. All that we have to do in such cases is to exercise caution before admitting such a statement. It could not be postulated, that in every case where the accused is not represented by counsel and could not submit the witness to a searching cross-examination, he had no opportunity to cross-examine and therefore that the evidence of the witness should not be admitted under Section 33 of the Evidence Act. It must also be remembered that in this case the accused did cross-examine, though not elaborately. On a careful consideration of all the- circumstances and on a perusal of the statement we think that this statement could safely be acted upon. No case has been brought to our notice which has gone to the extent of laying down that where an accused had not got the advantage of being represented by a counsel who could effectively cross-examine a witness, the statement given by a witness either in a previous Judicial proceeding or in the same proceeding, could not be admitted in evidence. We think that there is not much substance in the contention advanced on behalf of the appellant based on the want of an opportunity for effective cross-examination. It follows that the sessions Judge was justified in admitting the statement of Pydireddi made in the Committal Court as evidence. We have no hesitation in coming to the conclusion that this evidence could safely form the basis of the appellant's convictions.

4. In our opinion the convictions of the appellant are right. There are no mitigating circumstances which would entitle the appellant to a lesser sentence. The

convictions and sentences are confirmed and the appeal is dismissed.

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