In Re: Guruswami Tevar and ors.

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Court : Chennai

Decided On : Dec-04-1939

Reported in : AIR1940Mad196; (1940)1MLJ124

Appellant : In Re: Guruswami Tevar and ors.

Judgement :

Alfred Henry Lionel Leach, C.J.

1. In order to appreciate the question which has been referred, it is necessary to state certain of the facts. The appellants have been convicted of murder. The first, second and fourth appellants have been sentenced to death and the third and fifth appellants to transportation for life. Between 5 and 6 o'clock On the morning of the 31st March, 1939, one Nammalwar Naicker was attacked by a band of men and received 38 injuries from which he died shortly after midnight. As the result of his cries three persons who were in the vicinity were attracted to the spot where the deceased was lying. They had not seen the assault, but they said that they had seen rive persons running away. When these witnesses reached the deceased, he told them that he had been attacked by five men and gave their names and the names of their fathers. The names given were the names of the five appellants. One of these witnesses went and called the deceased's brother-in-law and another person, both of whom also gave evidence. These two witnesses went to the spot and the deceased informed them that the appellants were his assailants. The Village Munsif was called to the scene of the crime at about 8 A.M. and recorded a statement made by the deceased. In that statement also the deceased implicated

the appellants. The deceased was removed to the Hospital at Ettiyapuram and at about 2-30 P.M. his dying declaration was recorded by a Magistrate. In that statement the deceased again said that his assailants were the appellants. It was proved that there was enmity between the deceased and the appellants, who are of the Marava caste, but they were not the only members of that caste with whom he was at enmity. The question of law which arises is whether on the statements of a deceased person of the nature of those indicated without other testimony, except as to the number of the assailants, the appellants can be convicted of murder. The question has been referred to a Full Bench because the judgments of two Division Benches of this Court are in conflict. Neither of these judgments has been reported.

2. The first of the two cases which have given rise to this reference is Crl. App. No. 653 of 1935 which was decided by Beasley, C.J. and Gentle, J. The judgment was delivered by Gentle, J., who after quoting from Taylor on Evidence and referring to Emperor v. Akbarali Karimbhai (1935) M.W.N. 1089, In re Dab-bukota and six others (1905) 2 Weir 753 and Gula Ella Reddi v. King-Emperor I.L.R.(1933) 58 Bom. 31, observed:

Whilst the contents of a dying declaration can be relied upon as evidence for the prosecution, in the absence of any corroboration of its contents, it is clear from the authorities and text books that it is dangerous, imprudent and opposed to practice to do so, even when ho justifiable criticisms can be levelled against the declaration.

3. The judgment which is in conflict is the judgment in R.T. No. 112 of 1937, which was delivered by Burn, J., and in which I concurred. In that case, there was no corroboration of a dying declaration, but the facts were such that my learned brother and I had no hesitation in accepting it as reliable evidence and upheld the conviction of the accused. The question at issue has been fully argued before this Full Bench and I am unable to accept the observations which I have just quoted from the judgment of Gentle, J., as correctly stating the position. With great respect I regard the statement as being far too wide.

4. Section 32 of the Indian Evidence Act says that statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in certain specified cases. The first case specified is when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, where the cause of death comes into question. The section declares that such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Therefore a statement made by a person who is dead as to the cause of his death is evidence notwithstanding that he was not under expectation of death when he made it.

5. There are two other sections of the Evidence Act which may have important bearing in a case of this nature, namely, Sections 157 and 158. Section 157 says:

In to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

6. Section 158 is in these words:

Whenever any statement, relevant under Section 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denie 1 upon cross-examination the truth of the matter suggested.

7. There may not be corroboration of the nature contemplated by Section 157, or matters provable under Section 158, and the only direct evidence may be a statement by the deceased made admissible by Section 32. It does not, however, necessarily follow that this evidence is insufficient to support a conviction. In such a case the surrounding circumstances will have an important bearing. The

evidence of an accomplice is tainted, and Section 114 of the Evidence Act [illustration (b)] says that the Court may presume that he is unworthy of credit unless corroborated, but a dying declaration is on a much higher plane and the Act places no such restriction on its acceptance.

8. The reference which Gentle, J., made to Taylor on Evidence consisted of a quotation from Section 722 of the 11th Edition. This section deals with dying declarations and the quotation was as follows:

It should always be recollected that the accused has not the power of cross-examination, a power quite as essential to the eliciting of the truth as the obligation of an oath can be; and that where a witness has not a deep sense of accountability to his Maker, feelings of anger or revenge, or, in the case of mutual conflict, the natural desire of screening his own misconduct, nay affect the accuracy of his statements, and give a false colouring to the whole transaction.

9. This, of course, may be the case, but I should regard a statement by a person who has received a mortal wound, made immediately after the injury was caused, as being of high probative value when it relates to the cause of the injury, unless there is some reason shown to doubt its truth. The probative value of a statement of a person who has been mortally injured, but made after a considerable interval, during which time he has been surrounded by his relatives and friends, is certainly much less, but here again it seems to me it may be accepted if it fits in with earlier statements made when he could not have been influenced and they are otherwise unimpeachable.

10. In Emperor v. Akbarali Karimbhaii, Beaumont, C.J., observed:

Generally speaking, and as a rule of prudence, I am of opinion that a declaration, relevant under Section 32, but not made by one in immediate expectation of death, and not made in the presence of the accused, ought not to be acted upon unless there is some reliable corroboration.

11. The learned Chief Justice, however, agreed that there is no rule which requires that a dying declaration should not be acted upon unless it is corroborated and he

pointed out that the evidential value of a declaration relevant under Section 32 varies very much in accordance with the circumstances in which it is made. Here I respectfully agree, but I am not prepared to go so far as to say that a declaration re (sic) under Section 32, though not made in immediate expectation of death and not made in the presence of the accused, necessarily requires corroboration.

12. In In re Dabbukota and six others, it was said:

It is to be remembered that though dying declarations are in some respects deserving of a degree of consideration and credence to which ordinary statements are not, they are not subject to the test of cross-examination, and, if not substantially borne out by independent evidence and the probabilities of the case, or admitted facts, are worth little or nothing.

13. By this I presume is meant there must be corroboration before a dying declaration can be accepted. I have said sufficient to indicate that this statement is far too sweeping and it is open to the further objection that it offends against the law of evidence in India.

14. With regard to the case of Gula Ella Reddi v. The King Emperor (1905) 2 Weir 753, all that need be said is that the circumstances showed that it was unsafe to convict the accused on the bare dying declaration put in evidence in that case and naturally it was not accepted as being sufficient to prove the case for the Crown.

15. In my judgment it is not possible to lay down any hard and fast rule as to when a dying declaration should be accepted, beyond saying that each case must be decided in the light of the other facts and the surrounding circumstances, but if the Court, after taking everything into consideration, is convinced that the statement is true, it is its duty to convict, notwithstanding that there is no corroboration in the true sense. The Court must, of course, be fully convinced of the truth of v the statement and naturally it could not be fully convinced if there were anything in the other evidence or in the surrounding

16. mstances to raise suspicion as to its credibility.

17. I would answer the reference in this sense.

Lakshmana Rao, J.

18. I agree.

Krishnaswami Aiyangar, J.

19. I agree.

20. [In view of the Full Bench decision, the sentences were confirmed and the appeals dismissed.]