

In Re: Karuppan Samban

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Court : Chennai

Decided On : Sep-28-1915

Reported in : AIR1916Mad1211; 31Ind.Cas.359

Judge : Spencer and ;Phillips, JJ.

Appellant : In Re: Karuppan Samban

Judgement :

1. Apart from the evidence of prosecution witnesses Nos. 7 and 8 that they recognise the accused, which the Sessions Judge considers doubtful, there is the evidence of prosecution witnesses Nos. 5 and 6 that they saw the accused running away after stabbing, and there are three dying declarations (Exhibits D, E and H) in which the deceased named the accused as his assailant.

2. But it is contended that Exhibit D, the principal of these, has not been properly proved, because the Magistrate who recorded it was not examined as a witness in the case. Reliance for this contention is placed on. In the matter of the Petition of Samirud-din 10 C.L.R. 11, Gouridas Nomasudra v. Emperor 2 Ind. Cas. 841 and King-Emperor v. Mathura Thakur 6 C.W.N. 72. A similar observation to that in In the matter of the Petition of Samiruddin 10 C.L.R. 11, to the effect that when the Magistrate who records the dying declaration is not the Committing Magistrate and it is taken in the absence of the accused, it is not admissible unless the recording officer is examined as a witness, occurs also in Panchu Das v. Emperor 11 C.W.N. 666. The learned Judges have not stated their reasons for this position, nor have

they explained on what sections of the Criminal Procedure Code and the Evidence Act it is based. In *Gouridas Nomasudra v. Emperor* 2 Ind. Cas. 841, it is conceded that an oral statement of a deceased person as to the cause of his death, if made in the absence of the accused, may be proved by any one who heard it made, as well as by the person who recorded it. That is sufficient for the purpose of the case, as Exhibit D has been proved by the Sub-Assistant Surgeon who heard the statement being made and signed it. With all due deference, we are unable to follow the learned Judges who decided in the matter of the Petition of Samiruddin 810 C.L.R. 11 and *King-Emperor v. Mathura Thakur* 6 C.W.N. 72, when they say that the only way of proving such a statement is by calling a person who heard it made and permitting him to refresh his memory from the writing under Section 159 of the Evidence Act. Whether they are treated as written statements of deceased persons or as written records of verbal statements, Section 32(1) allows dying declarations which have been reduced to writing to be admitted as relevant facts. They thus become substantive evidence of the circumstances leading to the deceased person's death when the cause of the death is in question. A statement taken in the absence of the accused from a witness for the prosecution is described as a deposition' in Section 512, Criminal Procedure Code, but Sections 157 and 158, Evidence Act, show that, if it satisfies the conditions of Section 32, it is nevertheless a statement and as such is relevant whether the absence of the witness is caused by his death or by some other cause which makes him incapable of giving evidence in person. Since the explanation to Section 164 of the Criminal Procedure Code was added by the Code of 1898, the objection to Magistrates not having jurisdiction in the case recording dying declarations has lost its force.

3. Again Section 164, Criminal Procedure Code, declares that confessions recorded under this section shall be recorded in the manner prescribed by Section 364 for recording the confessions of accused persons, but mere statements of witnesses shall be recorded in one of such manners as are prescribed for recording evidence as the Magistrate may think best for the purpose. To lay down, as was done in *King-Emperor v. Mathura Thakur* 6 C.W.N. 72, that dying declarations to be of use should, as a rule, set out the exact questions put to the dying person and the answer returned by him is, in effect, to insist on a procedure

which the Code only makes obligatory in the examination of accused persons, How far the Court will treat the facts stated, therein as proved by such statements is quite another matter.

4. When, as here, the dying declaration has appended to it a certificate that it has been read over to the deponent and declared to be correct and this is signed; by the Magistrate who recorded the statement, Section 80 of the Evidence Act creates a presumption that the circumstances under which it is stated to have been taken are true, the investigation by the Magistrate being a judicial proceeding. In this case, we have the additional security that the Medical Officer was present when the statement was taken and certified that the patient was in his senses at the time.

5. The other two statements, Exhibits E and H, recorded by the Village Magistrate and the Head Constable, have been proved by examining as witnesses Nos. 3 and 4 the officials who took them. They also are not inadmissible, although the value of Exhibit E, the earliest statement on record, is lessened by its being a joint statement of the deceased and of P.W. No. 6 who was simultaneously wounded, so that it is difficult to say how much of the statement represents the deceased's own words.

6. Some discrepancies are apparent by comparing the statements of the deceased made at different times with each other and also by comparing them with the depositions of the witnesses examined in the case, but they are not so serious as to cast doubt on the essential truth of the prosecution story.

7. We think that the Sessions Judge and the Assessors were right in coming to the conclusion that the accused was the person who stabbed the deceased. The nature of the wound which pierced the heart indicates his intention to kill. Two motives have been put forward for the crime, one being the immorality of the deceased who was admittedly keeping the accused's sister, and the other being the deceased's refusal to send his sister, who was the accused's wife, to her husband. Both motives are mentioned in the deceased's statement to the Police, but only the former in his statement to the Magistrate. The Judge accepts the latter. It is difficult to say which was the real cause of the murder, but we consider

that from any point of view, this is not one of those cases in which we should take the extreme step of altering the sentence from transportation for life to one of death.

8. We, therefore, confirm the conviction and sentence and dismiss the appeal. We do not interfere in the criminal revision case.

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