

BOMBAY HIGH COURT

Allijan Munshi

Vs.

State (Bombay)

Criminal Appeal No. 898 of 1959

(Shah and Naik JJ.)

24.08.1959

JUDGMENT

Shah, J.

1. (After narrating the facts and examining certain contentions of the counsel for the appellant, his Lordship proceeded). Then, it was urged by Mr. Chari that the learned Judge allowed inadmissible evidence to be admitted on the record and that evidence must have seriously prejudiced the mind of the jury against the appellant. Reliance was sought to be placed upon the complaint, Exhibit C, which was submitted by Rashida on 15th August 1958 to the Commissioner of Police. By that complaint the appellant was charged with being a drunkard a gambler, a man of notoriously bad character and a 'white, slaver' who desired to dispose of his own wife (Rashida) for the purpose of prostitution and that he had committed rape upon his sister-in-law. The question of the admissibility of this complaint was, it appears, not raised before the trial Court and the complaint was admitted in evidence. Mr. Chari contends that a statement made by the victim of an offence which is not proximate in time to the death and directly related to its cause is inadmissible in evidence under section 32(1) of the Evidence Act and apart from that provision such a statement made by a person who has since died is inadmissible in evidence, because Section 32 exhaustively deals with the relevance and admissibility of evidence of persons not examined before the Court. In support of his contention Mr. Chari invited our attention to a judgment of the Madras High Court in *Venkatasubba Reddi v. Emperor*¹, In that case it was held that a statement made by a deceased person which constituted a motive for another to commit a crime could not be proved by the person who heard the deceased make the statement. Such a statement, it was held, was admissible in evidence under Section 32(1) of the Indian Evidence Act if it be a statement as to the cause of death or as to any of the circumstances of the transaction which resulted in death or under explanation (1) to Section 8 of the Act, if it was shown to have accompanied or explained any act of the deceased. But, it was observed, that there is nothing in section 8 to indicate that a relevant fact can be proved by hearsay evidence. In

that case, Mr. Justice Sundaram Chetti, who delivered the principal judgment of the Court observed that at first he thought that if what the victim stated about her intention to cancel her will constituted a motive for the accused to commit murder, that statement could be proved only by those who heard it from her, but after considering the provisions of

¹ ILR 54 Mad 931 : (AIR 1931 Mad 689)

section 32(1) and Section 8 of the Act, the learned Judge observed that with some hesitation, he was constrained to accede to the contention that the evidence of the witnesses who deposed to the statements made by the victim was inadmissible. Beasley C. J. was, however, emphatic in the view expressed by him. The learned Chief Justice observed that if the intention of a person could be proved by direct evidence, then such evidence was clearly admissible to prove the relevant fact of motive, but there was nothing in the Evidence Act which rendered hearsay evidence of an intention admissible. The learned Chief Justice also criticised the trial Court for failing to draw a distinction between the relevancy of evidence and its admissibility and observed that there is nothing in Section 8 of the Act which supported the contention of the prosecution that a relevant fact can be proved by hearsay evidence. The learned Chief Justice held that the statement alleged to have been made by the victim for altering her will was inadmissible in evidence.

2. Our attention was also invited to a judgment of the Privy Council in *Pakala Narayana Swami v. Emperor*², In that case the victim of the offence, before he started to go to another village, made a statement to his wife that the wife of the accused had written and asked him to go and receive payments due to him. This statement was sought to be proved at the trial and the Privy Council held that such a statement was inadmissible in evidence under section 32(1) of the Evidence Act as a circumstance of the transaction, which resulted in death. The Privy Council also observed that the phrase 'circumstances of the transaction' in the section conveyed some limitations. It was not as broad as circumstantial evidence which includes evidence of all relevant facts and it is narrower than *res gestae*, and laid down the test that the circumstances must have some proximate relation to the actual occurrence and must be of the transaction which resulted in the death of the declarant. Both these were the cases in which an oral statement, alleged to have been made by the victim sometime before the commission of the offence, which did not relate to the cause of death nor to the transaction which resulted in the death of the victim, was sought to be proved, and it was held in the Madras case that it was (not?) admissible under sections 32(1) and 8 of the Evidence Act and in the Privy Council case under Section 32(1) of the Act.

3. Reliance was also placed upon the judgment in *Gokul Chandra v. The State*³, in which Harries C. J. in delivering the judgment of the Court observed that letters written by a woman to members of her family during a period of five to nine months before her death showing that her state of mind was seriously affected by the cruel conduct of the members were not sufficiently nor closely enough connected with the actual transaction even though the statements therein had some relation to the cause of her suicide, and hence they could not be said to be circumstances of the transaction which resulted in death and were therefore inadmissible. In that case the Court did not consider whether under Section 8 of the Evidence Act the statements could be regarded as

admissible. Evidently, the statements were made several months before the date on which the woman died and in the view of the Court there was no proximate connection between the death of the woman and the incidents which were related in those letters showing that her mind was seriously affected by the cruel conduct of the members of the family. It is true that in that case the original letters were sought to be proved, but the Court having come to the

²66 Ind App. 66 : (AIR 1939 PC 47)

³ AIR 1950 Cal 306

conclusion that they were not, proximate to and connected with the actual transaction which resulted in death, they were inadmissible.

4. These authorities, however, do not in our judgment support the view that a complaint in writing made by a person who dies sometime thereafter, expressing apprehension of death at the hands of some person is inadmissible in evidence under sections 32(1) and 8 of the Evidence Act, when the person whose conduct is the source of the apprehension, is charged with the offence of murder of the person making the complaint. In the complaint, Exhibit C, it is stated 'As this concerns with my whole life, I am afraid, if no prompt action is taken, a poor life would be destroyed etc. etc....'. The statement showing apprehension of death on account of the conduct of the appellant was admissible as a statement relating to the circumstances of the transaction. The complaint was made nearly two months before the date of the death of Rashida, but, on that ground alone we are unable to hold that there was no proximate connection between the death and the making of this complaint. It appears to us therefore that this statement may be admissible under section 32(1) of the Evidence Act. In any event the fact of the making of the complaint was admissible as explanatory of the conduct of Rashida, under Section 8 of the Act. In *Goloke Behari v. Emperor*⁴, it was held by a Division Bench of the Calcutta High Court, following a judgment of this Court in *Emperor v. Manchankhan*⁵, that a complaint filed by the victim with the police is 'conduct' and such conduct may be proved whether the person whose conduct is sought to be proved is alive or dead. In that case a complaint was filed with the Sub-Divisional Officer stating that the petitioner seriously apprehended danger to his life, liberty and reputation at the hands of certain persons. This complaint was filed six days before the day on which the petitioner was found missing and it was held that the complaint was admissible in evidence under Section 8 of the Evidence Act. In 34 Bom LR 1087, it was held by Mr. Justice Fawcett that a letter addressed to the Commissioner of Police by the victim of the offence asking for protection and stating that he apprehended injury from one of the accused and that he was in fear of his life, was admissible in evidence under Section 8 of the Evidence Act as containing statements which accompanied and explained the conduct of the victim, such conduct having been influenced by a fact in issue and a relevant fact. It was pointed out that under explanation 1 of Section 8 of the Act, statements that accompany and explain acts other than statements are included in the word 'conduct' and so are themselves admissible under this section and that illustrations (j) and (k) to the section show that the terms of a complaint made by the victim of an offence are admissible. If the victim's act in petitioning the Commissioner is 'conduct' relevant under Section 8 in the view of Mr. Justice Fawcett the terms of his petition are relevant by virtue of explanation 1 to that section.

5. Under Section 8 of the Evidence Act any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. If the motive for the commission of the offence is relevant, we fail to appreciate why the making of a complaint by Rashida against the appellant charging him with serious offences may be regarded as inadmissible. The whole argument of Mr. Chari proceeded upon a fallacious - assumption that Section 32 of the Evidence Act is a complete Code relating to admissibility of statements alleged to have been made by persons who cannot be

⁴ ILR 1938-1 Cal 290 : (AIR 1938 Cal 51)

⁵34 Bom LR 1087

examined before the Court and the admissibility of statements alleged to be made by persons who are not available to give evidence on account of circumstances set out in Section 32 is circumscribed by that section. In our view, if the fact to be proved is a statement made by a person since deceased, and it is admissible under a provision other than Section 32 of the Evidence Act its admissibility cannot be denied because it does not fall within the provisions contained in Section 32. In *R. D. Sethana v. Mirza Mahomed Shirazi*⁶ this Court held that Section 32 of the Indian Evidence Act imposes restrictions upon the admissibility of statements made by persons who cannot be brought before the Court for giving evidence : but, if a statement is admissible under any other provision of the Act, it being altogether immaterial whether the person who made the statement was alive or dead, the admissibility of that statement will not be affected because the person who is alleged to have made that statement was dead.

6. We must however observe that by the mere production of a document, the truth of its contents cannot be regarded as established. The fact that Rashida had made a complaint against the appellant, which might have constituted a motive for the appellant to commit the offence charged, is a fact, which can be proved under Section 8 of the Evidence Act and production of the original complaint proved that fact. We are, therefore, unable to agree with the contention of Mr. Chari that the complaint, Exhibit C, is inadmissible.

(Rest of the judgment is not necessary for the purposes of this report).

Appeal dismissed.

⁶9 Bom LR 1047