

MUNIAPPAN

v.

STATE OF MADRAS

(J. L. KAPUR and M. HIDAYATULLAH, JJ.)

Dying Declaration—Thumb impression of dead person—Admissibility.

It was alleged that the appellant had stabbed the deceased E. Soon after E was stabbed, he was taken to the Police Station where the Sub-Inspector immediately started recording his statement. After E had spoken one complete sentence, he could not speak any further and it was found that he had in fact died. Thereupon the Sub-Inspector took the thumb impression of E upon the statement as recorded, which was treated as the dying declaration.

Question was that, when the dying declaration was interrupted by death ensuing suddenly, then, whether such declaration would be admissible in evidence; and the probative value of such dying declaration, which was described as an incomplete document.

Held, that the thumb impression taken on the dying declaration after the man was dead, must be ignored. Corroboration would not always be necessary if the dying declaration was complete in its accusation and there is nothing to show that the maker of the statement had anything further to add.

In this case the dying declaration was a completed statement which was catagoric in character and there was nothing to show that the victim had anything more to say. It therefore, needed no corroboration and could be relied upon.

Khushal Rao v. State of Bombay, [1958], S.C.R. 552, relied on.

Cyril Waugh v. The King [1950], A.C. 203, explained and distinguished.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 49 of 1961.

Appeal by special leave from the judgment and order dated August 30, 1960, of the Madras High Court in Criminal Appeal No. 468 of 1960 and referred Trial No. 38 of 1960.

V. N. Sethi, for the appellant.

R. Ganapathy Iyer and T. M. Sen, for the respondent.

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1961. September 27. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—This is an appeal against the judgment of the High Court of Madras, with special leave granted by this Court. The appellant was convicted under s. 302, I.P.C., and sentenced to death for the murder of one Elumalai on January 24, 1960, at Kannankurichi. The facts of the case are simple :

Two days before this occurrence the appellant Muniappan and Elumalai had a quarrel at a tea-stall. Though the quarrel really was between the appellant and some others, Elumalai had intervened in that quarrel, and made some remarks about the appellant, and had advised the party opposite to him to make a complaint. Two reports of that incident were made, one by the appellant and the other by his rivals. On January 24, 1960, at about 12.30 P.M., P.W. 1 Muthuswami Udayar was having a bath when he heard Elumalai calling out to him "Mama". Muthuswami Udayar ran to the place from which this cry had come and found Elumalai with several stab wounds on his body. Muthuswami Udayar questioned Elumalai, and the latter told him that it was the appellant Muniappan who had caused injuries to him. Muthuswami gave first aid to Elumalai, and meanwhile Elian *alias* Kundaswami (P.W.2) and K.R. Perumal (P.W.3) also arrived on the scene. These persons carried Elumalai to the Police Station House which was at a distance of about 80 yards. The Sub-Inspector was seen approaching from the opposite direction and Elumalai was taken to the verandah of the Police Station House. The Sub-Inspector immediately started recording the statement of Elumalai. After Elumalai had spoken one complete sentence, he could not speak any further, and though he was given some soda-water to drink, it was found that he could not swallow it and had, in fact, died. The Sub-Inspector thereupon took the thumb-impression of Elumalai upon the statement as recorded, and

four other witnesses also signed or put their thumb marks on it. Muniappan also reached the Police Station House after a few minutes and virtually surrendered himself to the police. One of his clothes, which was stained with blood, was seized and in one of his pockets was found a sheath which was also seized as presumably belonging to the knife with which the stab injuries were caused. On a statement by Muniappan the Police went to a garden and recovered from there a knife which later was found to be stained with human blood. Investigation disclosed that this knife together with the sheath was purchased by Muniappan from Ameer Khan (P.W. 6) on the evening of January 23, 1960.

The police therefore charged Muniappan with an offence under s. 302 I.P.C. The evidence led against him consisted of the testimony of Ameer Khan (P.W. 6) about the purchase of the knife complete with a sheath for Rs. 6/-; the testimony of witnesses about the incident which took place two days before the murder; the dying declaration made to Muthuswami (P.W. 1); the dying declaration recorded by the Sub-Inspector in the presence of witnesses; an alleged statement made by the accused to the doctor when he was examined for an injury on his thumb and the evidence of the alleged eye witness Elian *alias* Kundaswami (P.W. 2). The two courts below convicted the appellant of the offence of murder and sentenced him to death.

In this appeal it is contended that the evidence of the eye witness (P.W. 2) and the statement of the appellant made to the Doctor, who examined him, having been excluded, there was not sufficient evidence in the case if the dying declaration recorded by the Sub-Inspector is excluded. The main argument in this case is, therefore, about the admissibility and the probative value of the dying declaration which is described as an incomplete document completed dishonestly by getting the thumb impression of Elumalai when he was dead.

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No doubt, the thumb impression of Elumalai was taken on the dying declaration after he was dead and to that extent the thumb impression must be ignored. We do not agree with the learned counsel for the appellant that this was done from an improper or dishonest motive to give a colour of completion to an incomplete document. The reason for that is not far to seek. The Sub-Inspector after recording what Elumalai had to say noted that "soon after Elumalai had said those words his speech stopped. His life was gone." The thumb impression followed this endorsement. It appears to us that the Sub-Inspector who was nonplussed by the sudden collapse of Elumalai, did not know what to do and he thought that it was proper to take the thumb impression on the statement as it had been made. The Sub-Inspector should have left the document as it was, without taking the thumb mark of the dead man, but we do not feel compelled to hold that he did so out of any improper motive, inasmuch as he had noted that the man was dead before the thumb impression was taken. That also was his testimony in court, and that of the attesting witnesses. The fact, however, remains that the dying declaration was interrupted by death ensuing suddenly. The question is whether this dying declaration is admissible in evidence.

The learned counsel for the appellant has relied on a case of the Privy Council from Jamaica reported in *Cyril Waugh v. The King*(¹). In that case, one Phillip Newby was shot and he made a dying declaration which was taken down but which was not complete because Newby suddenly fell into a coma from which he never recovered. The Privy Council ruled out that dying declaration on the ground that being incomplete it could not be taken into account after ignoring the lost sentence which was incomplete because in the middle of it Newby fell into a coma and died. That dying declaration, if examined clearly shows that Newby had not

(1) [1950] A.C. 203.

charged any person by name but had described his assailant as "a man". In the sentence which was incomplete in his statement Newby had begun to say "The man had an old grudge for me simply because..." It is quite clear that if that sentence had been completed, a clue would have been furnished as to the identity of the assailant by the facts about the old grudge which Newby wanted to disclose. The dying declaration, therefore, was an incomplete statement and in so far as it went, had no value unless it was completed by some other evidence which of course would not have been a part of Newby's statement. The reason for excluding that dying declaration was, therefore, quite clear, and if the present dying declaration can be said to be of a similar character, then the argument of the counsel for the appellant must prevail.

The dying declaration in the present case was as follows :

"Sir,

This day 24th January, 1960, in the noon at 12.30 Muniappan, son of Kola Goundan of Kannankurichi stabbed me in my body with knife.

Soon after he said these words, his speech stopped. His life was gone.

(Left thumb impression of) Elumalai.
witnesses:

1. (Signed in Tamil) Muthuswami Udayar.
2. (Signed) K. R. Perumal.
3. (Signed in Tamil) C. Kannan.
4. (Left thumb impression of) Kundaswami

24th January, 1960.

(Signed) S. A. Amir
Sub-Inspector.

Here, the accusation against the appellant was complete, and there is nothing to show that Elumalai wished to say anything more or that he had anything more to add. In so far as the dying declaration, goes, it is a complete statement, and makes a

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very clear accusation against the appellant. If this dying declaration is taken into account, then it hardly needs corroboration in view of the decision of this Court in *Khushal Rao v. State of Bombay*(¹). The Privy Council case, therefore, is clearly distinguishable on facts and does not apply to the dying declaration with which we have to deal. The Privy Council case was considered by this Court in *Abdul Sattar v. Mysore State* (²), where also the dying declaration was incomplete but was quite categoric in character and definitely indicated that it was the accused in that case who had shot the deceased. The dying declaration was, therefore, acted upon. The learned counsel for the appellant attempted to distinguish *Abdul Sattar's case*(²) on the ground that in that case there was corroboration of the dying declaration and contended that an incomplete dying declaration, if categoric in character, may be acted upon if corroborated but not if not so corroborated. In our opinion, corroboration would not always be necessary if the dying declaration is complete in its accusation and there is nothing to show that the maker of the statement had anything further to add. That is the case here. In this case, however, there is some other evidence to incriminate the accused. The injuries were caused with a knife and a knife was found at some distance from the scene of occurrence on information furnished to the police by the accused. That knife was found to be stained with human blood and the accused had in his possession a sheath which was identified as belonging to the knife by the shopkeeper who had the day previous sold the knife and the sheath to the appellant Muniappan. There is also the conduct of the appellant in surrendering himself to the police at 12.40 P.M. that is to say, within ten minutes of the occurrence. The appellant had an injury on his thumb which he apparently got in attempting to stab Elumalai. The injury was situated on the thumb of his left hand on the lateral side and must have been

(1) [1958] S. C. R. 552.

(2) A. I. R. (1956) S. C. 168.

caused when he struck Elumalai repeatedly holding him with his left hand and wielding the weapon with his right hand. There is also evidence of motive in the shape of a quarrel which had taken place only two days previously and in respect of which the rival parties had made their respective reports to the police. There was also corroboration in the shape of a dying declaration made by Elumalai to the first prosecution witness Muthuswami when he reached the spot after Elumalai had raised a cry for help.

In view of all these circumstances we are satisfied that the evidence in this case is sufficient to warrant the conviction of the appellant on a charge of murder. The dying declaration is, in our opinion, categorical in character and unmistakably accuses the appellant of the crime and we have no hesitation in accepting it.

In the result, the appeal fails and is dismissed.

Appeal dismissed.

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