

1946

Present : Dias J.

PERERA, Appellant, and JIRASINGHE (S. I. Police),
Respondent.

1,038—M. C. Gampaha, 31,685.

Evidence—Statements of a deceased person not relating to the cause of his death or to any of the circumstances of the transaction which resulted in his death—Admissibility—Evidence Ordinance, s. 32 (1).

Statements made by a person who is dead are inadmissible in evidence under section 32 (1) of the Evidence Ordinance when they do not refer to the cause of his death or when they do not relate to any of the circumstances of the transaction which resulted in his death.

A PPEAL against a conviction from the Magistrate's Court, Gampaha.

H. W. Jayewardene, for the accused, appellant.

J. G. T. Weeraratne, C.C., for the Attorney-General.

October 28, 1946. DIAS J.—

Although this is a comparatively trivial case, the question of law raised by Mr. Jayewardene, counsel for the accused-appellant, is one of importance and substance.

The accused was charged with causing simple hurt (section 314) to a batgama duraya man called H. P. Jundiya. It appears that on March 9, 1946, the accused was in a boutique when this so-called low-caste man had the effrontery to light a cigarette in the presence of the high caste accused, who, thereupon, went up to Jundiya and struck him once on the face and kicked him on his back saying:—"You padduwas must behave like padduwas. Go away."

Jundiya meekly left the spot. He went home but made no complaint. He thereafter developed pain in his body. There is no evidence to show that these pains were the result of the act of the accused. He became worse. He was taken to the General Hospital, Colombo, where he died.

The prosecution has led no evidence whatever to show that his death was in any manner connected with or was caused by the blows struck by the accused. For aught we know, Jundiya may have died of heart disease or some other ailment.

The evidence against the accused consists of the direct evidence of the witness H. P. Siriya, who was a companion of the complainant, and who witnessed the incident. If his evidence is believed, there is sufficient testimony to justify the Magistrate in finding the accused guilty under section 314.

The prosecution, however, went further and elicited from the witnesses, Francis, and the mother of the deceased, Marthina, the statements made by the deceased man that he was kicked and assaulted by this accused.

At the time the evidence was admitted the complainant was dead. The points taken for the appellant are that these statements were inadmissible in evidence under section 32 (1) of the Evidence Ordinance because: (a) they do not refer to the cause of the deceased man's death. The deceased man merely stated that the accused man had kicked and beaten him. There is no evidence that that beating, in any way, was the cause of his death; and (b) that they do not relate to any of the circumstances of the transaction which resulted in his death. There is no evidence in this case to show that the transaction which resulted in the assault was part and parcel of the transaction or a part of the transaction which resulted in the man's death in the General Hospital.

The prosecution might have bridged that gap by leading evidence but they have failed to do so. The statements of Jundiya are, therefore, inadmissible. The learned Crown Counsel has not attempted to justify the admission of this evidence.

That the Magistrate was influenced by the admission of this inadmissible evidence is reflected in his judgment. For he refers to the "surfeit of evidence" against the accused. As a matter of fact, there was only one admissible witness against him. He has also been prejudiced, unconsciously no doubt, against the accused, because he comments adversely on the failure of the accused to enter the witness-box against this volume of evidence, and he has imposed the somewhat severe sentence of six months for what is after all a simple offence triable by a Rural Court.

I have been perplexed as to what order I should make. The case, as I have pointed out, is a trivial one. On the other hand, if the facts are true, it is very high-handed conduct on the part of this so-called high-caste man to treat his low-caste brother in this manner in modern Ceylon in this year of grace 1946. I do not think it is necessary to send the case back for a new trial before another Magistrate.

This is a case in which I may act under the provisions of section 167 of the Evidence Ordinance. I banish from my mind the inadmissible evidence. Siriya's evidence, which has been accepted, proves the charge against the accused.

I therefore affirm the finding but I think the sentence of six months' imprisonment is far too severe.

I set aside the conviction and, acting under section 325 (1) of the Criminal Procedure Code, I order that the Magistrate should discharge the accused after due admonition in open Court as to the proper conduct

which a high-caste man, by reason of that status, is expected to exhibit towards his so-called low-caste brother. A batgama duraya is as much entitled to smoke in public and to act in precisely the same way as a so-called high-caste man can do. The Magistrate will also indicate to the accused that he is fortunate in not having to serve a sentence of imprisonment in this case—a result which would inevitably have resulted, were it not for the slip made by the prosecution in eliciting inadmissible evidence.

Accused warned and discharged.
